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OFFICE OF SPECIAL COUNSEL

5 CFR Part 1820

Revision of Regulations Governing Freedom of Information Act Requests and Appeals, and Revision of Touhy Regulations Governing Release of Information in Response to Legal Proceedings; Correction

AGENCY: U.S. Office of Special Counsel.

ACTION: Final rule; correction.

SUMMARY: This document corrects the Overview of Comments Received section to a final rule published in the **Federal Register** as of October 24, 2016, regarding Revision of Regulations Governing Freedom of Information Act Requests and Appeals, and Revision of Touhy Regulations Governing Release of Information in Response to Legal Proceedings. This correction addresses the final paragraph of Section II, Overview of Comments Received, which should be disregarded or removed.

DATES: Effective November 7, 2016.

FOR FURTHER INFORMATION CONTACT: Amy Beckett, Senior Litigation Counsel, U.S. Office of Special Counsel, (202) 254–3657.

SUPPLEMENTARY INFORMATION: In final rule FR Doc. 2016–23215, appearing on page 73015 in the issue of October 24, 2016, make the following correction in the Overview of Comments Received section of the final rule. On page 73016, in the second column, remove the last paragraph of the Comments Received section.

Dated: October 31, 2016.

Bruce Gipe,

Chief Operating Officer.

[FR Doc. 2016–26779 Filed 11–4–16; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2016–0103]

RIN 3150–AJ75

List of Approved Spent Fuel Storage Casks: Holtec International HI–STORM Flood/Wind Multipurpose Canister Storage System, Amendment No. 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is confirming the effective date of November 7, 2016, for the direct final rule that was published in the **Federal Register** on August 23, 2016. The direct final rule amended the NRC's spent fuel storage regulations by revising the ''List of Approved Spent Fuel Storage Casks'' to include Amendment No. 2 to Certificate of Compliance (CoC) No. 1032 for the Holtec International (Holtec) HI–STORM Flood/Wind (FW) Multipurpose Canister (MPC) Storage System.

DATES: *Effective Date:* The effective date of November 7, 2016, for the direct final rule published August 23, 2016 (81 FR 57442), is confirmed.

ADDRESSES: Please refer to Docket ID NRC–2016–0103 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0103. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the **SUPPLEMENTARY INFORMATION** section.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Vanessa Cox, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–8342 or email: *Vanessa.Cox@nrc.gov.*

SUPPLEMENTARY INFORMATION: On August 23, 2016 (81 FR 57442), the NRC published a direct final rule amending § 72.214 of title 10 of the *Code of Federal Regulations* (10 CFR) by revising the ''List of approved spent fuel storage casks'' to include Amendment No. 2 to CoC No. 1032 for the Holtec HI–STORM FW MPC Storage System. Amendment No. 2 adds new fuel types to the HI–STORM FW MPC Storage System, adds new criticality calculations, updates an existing fuel type description, includes changes previously incorporated in Amendment No. 0 to CoC No. 1032, Revision 1, and makes clarifying changes to a CoC condition. In the direct final rule, the NRC stated that if no significant adverse comments were received, the direct final rule would become effective on November 7, 2016. As described more fully in the direct final rule, a significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change.

The NRC received two comments on the direct final rule (ADAMS Accession Nos. ML16252A336 and ML16271A024). As described below, the NRC determined that these were not significant adverse comments and did not make any changes to the direct final rule as a result of the public comments.

One comment stated ''good.'' The NRC determined that this comment does not meet the criteria of significant and adverse because it does not explain why

the rule is inappropriate. The other comment contained general statements and questions about dry cask storage systems manufactured by Holtec and used overseas, Independent Spent Fuel Storage Installations, and the infrastructure for the transportation of spent fuel. The NRC determined that this general comment about spent fuel storage and transportation is not within the scope of the direct final rule, which is limited to the specific changes contained in Amendment No. 2 to CoC No. 1032. Therefore, because no significant adverse comments were received, the direct final rule will become effective as scheduled. The final CoC, Technical Specifications, and Safety Evaluation Report can be viewed in ADAMS under Accession No. ML16280A008.

Dated: November 1, 2016.

For the Nuclear Regulatory Commission.

Cindy Bladey,

Chief, Rules, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 2016–26775 Filed 11–4–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

[NRC–2014–0221]

NRC Enforcement Policy

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy revision; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a revision to its Enforcement Policy (Policy) to incorporate changes approved by the Commission.

DATES: This revision is effective on November 7, 2016. The NRC is not soliciting comments on this revision to its Policy at this time.

ADDRESSES: Please refer to Docket ID NRC–2014–0221 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0221. Address questions about NRC dockets to Carol Gallagher: telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

The NRC maintains the Enforcement Policy on its Web site at *http://www.nrc.gov:* under the heading ''Popular Documents,'' select ''Enforcement Actions,'' then under ''Enforcement'' in the left side column, select ''Enforcement Policy.'' The revised Enforcement Policy is available in ADAMS under Accession No. ML16271A446.

FOR FURTHER INFORMATION CONTACT: Gerry Gulla, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–287–9143; email: *Gerald.Gulla@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The mission of the NRC is to license and regulate the Nation's civilian use of byproduct, source, and special nuclear material to ensure adequate protection of public health and safety, promote the common defense and security, and protect the environment. The NRC supports this mission through its use of its Policy. Adequate protection is presumptively assured by compliance with the NRC's regulations, and the Policy contains the basic procedures used to assess and disposition apparent violations of the NRC's requirements.

The NRC initially published the Policy in the **Federal Register** on October 7, 1980 (45 FR 66754). Since its initial publication, the Policy has been revised on a number of occasions to address changing requirements and lessons learned. The most recent Policy revision is dated August 1, 2016. That revision reflects the new maximum civil penalty amount that the NRC can assess for a violation of the Atomic Energy Act of 1954, as amended (AEA), or any regulation or order issued under the AEA.

This current revision to the Policy incorporates lessons learned along with miscellaneous clarifications and additions. These revisions include a rewrite of Section 6.13, ''Information Security,'' to incorporate a risk-informed approach for assessing the significance of information security violations; the implementation of the Construction Reactor Oversight Process (cROP); and miscellaneous revisions to: (1) The Glossary; (2) violation examples; and (3) Section 2.3.4, ''Civil Penalty.''

The NRC provided an opportunity for the public to comment on these Policy revisions in a document published in the **Federal Register** on October 9, 2014 (79 FR 61107). The Nuclear Energy Institute (NEI) was the only stakeholder that submitted comments (ADAMS Accession No. ML14364A020).

II. Revisions to the Enforcement Policy

1. Construction Reactor Oversight Process (cROP)

a. Table of Contents

The NRC is revising the Table of Contents to incorporate the implementation of the cROP into the Policy. This requires a revision to the titles of Sections 2.2.3 and 2.2.4. In addition to the revision discussed below, there are also other miscellaneous cROP related reference revisions throughout the Policy.

b. Section 2.2 ''Assessment of Violations''

Section 2.2 is modified to include the cROP, and remove the specificity which allows for the use of the significance determination process (SDP), not only for facilities under construction, but for independent spent fuel storage installations when an SDP is developed.

Revision

After a violation is identified, the NRC assesses its severity or significance (both actual and potential). Under traditional enforcement, the severity level (SL) assigned to the violation generally reflects the assessment of the significance of a violation. For most violations committed by power reactor licensees, the significance of a violation is assessed using the Reactor Oversight Process (ROP) or the Construction Reactor Oversight Process (cROP), as discussed below in Section 2.2.3, ''Assessment of Violations Identified Under the ROP or cROP.'' All other violations at power reactors or power

reactor facilities under construction will be assessed using traditional enforcement as described in Section 2.2.4, ''Using Traditional Enforcement to Disposition Violations Identified at Power Reactors.'' Violations identified at facilities that are not subject to an ROP or cROP are assessed using traditional enforcement.

c. Section 2.2.3 ''Operating Reactor Assessment Program''

The NRC is revising this section to add the implementation of the cROP and will reference the NRC's Inspection Manual Chapter (IMC) 2505, ''Periodic Assessment of Construction Inspection Program Results'' (ADAMS Accession No. ML14269A107). IMC 2505 describes the construction assessment program and IMC 0305, ''Operating Reactor Assessment Program,'' describes the ROP (ADAMS Accession No. ML15089A315).

Revision

2.2.3 Assessment of Violations Identified Under the ROP or cROP

The assessment, disposition, and subsequent NRC action related to inspection findings identified at operating power reactors are determined by the ROP, as described in NRC Inspection Manual Chapter (IMC) 0305, ''Operating Reactor Assessment Program,'' and IMC 0612, ''Power Reactor Inspection Reports.'' The assessment, disposition, and subsequent NRC action related to inspection findings identified at power reactors under construction are determined by the cROP, as described in IMC 2505, ''Periodic Assessment of Construction Inspection Program Results'' and in IMC 0613, ''Power Reactor Construction Inspection Reports.''

Inspection findings identified through the ROP are assessed for significance using the SDP described in IMC 0609, ''Significance Determination Process.'' Inspection findings identified through the cROP are assessed for significance using the SDP described in IMC 2519, ''Construction Significance Determination Process.'' The SDPs use risk insights, where possible, to assist the NRC staff in determining the significance of inspection findings identified within the ROP or cROP. Inspection findings processed through the SDP, including associated violations, are documented in inspection reports and are assigned one of the following colors, depending on their significance.

d. Section 2.2.4 ''Exceptions To Using Only the Operating Reactor Assessment Program''

The NRC is revising this section to add the implementation of the cROP and will reference IMC 2505.

Revision

2.2.4 Using Traditional Enforcement to Disposition Violations Identified at Power Reactors

Some aspects of violations at power reactors cannot be addressed solely through the SDP. In these cases, violations must be addressed separately from any associated ROP or cROP findings (when findings are present). Accordingly, these violations are assigned severity levels and can be considered for civil penalties in accordance with this Policy while the significance of the associated ROP or cROP finding (when present) must be dispositioned in accordance with the SDP. In determining the severity level assigned to such violations, the NRC will consider information in this Policy and the violation examples in Section 6.0 of this Policy, as well as SDP-related information, when available.

e. Section 2.2.6 ''Construction''

Section 2.2.6, ''Construction,'' will be revised to provide clarifying guidance regarding enforcement and the Changes during Construction (CdC) Preliminary Amendment Request (PAR) process. The policy will now note that enforcement actions will not be taken for construction pursuant to a PAR No-Objection Letter, issued by the NRC, even if that construction is outside of the current licensing basis (CLB) while a corresponding license amendment request (LAR) is under review. This will allow the licensee to continue construction at-risk if the construction is consistent with the associated LAR and the No-Objection Letter. In addition, this section will also be revised to conform the policy to be consistent with the revised regulations promulgated by the NRC in ''Licenses, Certifications, and Approvals for Materials Licenses'' (76 FR 56951; September 15, 2011).

Revision

2.2.6 Construction

In accordance with 10 CFR 50.10, no person may begin the construction of a production or utilization facility on a site on which the facility is to be operated until that person has been issued either a construction permit under 10 CFR part 50, a combined license under 10 CFR part 52, an early site permit authorizing the activities under 10 CFR 50.10(d), or a limited work authorization under 10 CFR 50.10(d). In an effort to preclude unnecessary regulatory burden on 10 CFR part 52 combined license holders while maintaining safety, the Changes during Construction (CdC) Preliminary Amendment Request (PAR) process was developed in Interim Staff Guidance (ISG)–025, ''Interim Staff Guidance on Changes During Construction Under 10 CFR part 52.'' The license condition providing the option for a PAR as detailed in ISG–025 allows the licensee to request to make physical changes to the plant that are consistent with the scope of the associated license amendment request (LAR). The NRC staff may issue a No-Objection Letter with or without specific limitations, in response to the PAR. Enforcement actions will not be taken for construction pursuant to a PAR No-Objection Letter that is outside of the Current Licensing Basis (CLB) while the corresponding LAR is under review as long as the construction is consistent with the associated LAR and the No-Objection Letter (the latter of which may contain limitations on construction activities). The PAR No-Objection Letter authorization is strictly conditioned on the licensee's commitment to return the plant to its CLB if the requested LAR is subsequently denied or withdrawn. Failure to timely restore the CLB may be subject to separate enforcement, such as an order, a civil penalty, or both.

f. Section 2.3.1 ''Minor Violation''

This revision will remove redundant language (IMC titles) from previously identified IMCs and will add references to examples of minor violation issues found in IMCs 0613 and 0617.

Revision

Violations of minor safety or security concern generally do not warrant enforcement action or documentation in inspection reports but must be corrected. Examples of minor violations can be found in the NRC Enforcement Manual, IMC 0612, Appendix E, ''Examples of Minor Issues,'' IMC 0613, Appendix E, ''Examples of Minor Construction Issues,'' and IMC 0617, Appendix E, ''Minor Examples of Vendor and Quality Assurance Implementation Findings.'' Provisions for documenting minor violations can be found in the NRC Enforcement Manual, IMC 0610, IMC 0612, IMC 0613, IMC 0616, and IMC 0617.

g. Section 2.3.2 ''Noncited Violation''

This revision incorporates ''plain writing'' into the Policy regarding noncited violations. It will also revise

the opening paragraph of Section 2.3.2 to be consistent with a previous approved revision to this section associated with crediting licensee corrective action programs.

Revision

2.3.2 Noncited Violation

If a licensee or nonlicensee has implemented a corrective action program that is determined to be adequate by the NRC, the NRC will normally disposition SL IV violations and violations associated with green ROP or cROP findings as noncited violations (NCVs) if all the criteria in Paragraph 2.3.2.a. are met.

For licensees and nonlicensees that are not credited by the NRC as having adequate corrective action programs, the NRC will normally disposition SL IV violations and violations associated with green ROP or cROP findings as NCVs if all of the criteria in Paragraph 2.3.2.b are met. If the SL IV violation or violation associated with Green ROP or cROP finding was identified by the NRC, the NRC will normally issue a Notice of Violation.

Inspection reports or inspection records document NCVs and briefly describe the corrective action the licensee or nonlicensee has taken or plans to take, if known. Licensees and nonlicensees are not required to provide written responses to NCVs; however, they may provide a written response if they disagree with the NRC's description of the NCV or dispute the validity of the NCV.

2. Section 2.3.4 ''Civil Penalty''

Recent cases involving the willful failure to file for reciprocity or to obtain an NRC specific license have led to discussions about the agency's ability to deter future noncompliance in these areas and lessen the perceived potential economic benefit of working in NRC jurisdiction without the required notification or license.

Although the Policy (Section 3.6, ''Use of Discretion in Determining the Amount of a Civil Penalty'') allows the NRC to exercise discretion to propose or escalate a civil penalty for cases involving willfulness, the NRC will add clarifying language to Section 2.3.4, ''Civil Penalty.'' To aid in implementation and ensure consistency, the Enforcement Manual will include specific guidance on the typical or ''starting'' civil penalty amount (*e.g.,* 2 times the base civil penalty).

Revision

The following language appears in Section 2.3.4 after the paragraph starting: ''The NRC considers civil penalties for violations . . .''

For cases involving the willful failure to either file for reciprocity or obtain an NRC specific license, the NRC will normally consider a civil penalty to deter noncompliance for economic benefit. Therefore, notwithstanding the normal civil penalty assessment process, in cases where there is any indication (*e.g.,* statements by company employees regarding the nonpayment of fees, previous violations of the requirement including those not issued by the NRC, or previous filings without a significant change in management) that the violation was committed for economic gain, the NRC may exercise discretion and impose a civil penalty. The resulting civil penalty will normally be no more than 3 times the base civil penalty; however, the agency may mitigate or escalate the amount based on the merits of a specific case.

3. Addition of Section 3.10 ''Reactor Violations With No Performance Deficiencies''

The NRC is revising Section 2.2.4.d to clarify that violations with no ROP findings are dispositioned by using traditional enforcement. Section 3.10, ''Reactor Violations with No Performance Deficiencies,'' has been added for NRC guidance to properly disposition these violations. This clarification involves no actual change in policy.

Revisions

2.2.4.d: Violations not Associated With ROP or cROP Findings

3.10 Reactor Violations With No Performance Deficiencies

The NRC may exercise discretion for violations of NRC requirements by reactor licensees for which there are no associated performance deficiencies (*e.g.,* a violation of a TS which is not a performance deficiency).

4. Section 6.0 ''Violation Examples''

a. 6.3 ''Materials Operations''

Section 6.3, ''Materials Operations,'' of the Policy addresses the failure to secure a portable gauge as required by 10 CFR 30.34(i). Specifically, under the current Policy, paragraph 6.3.c.3, a Severity Level (SL) III violation example, states, ''A licensee fails to secure a portable gauge with at least two independent physical controls whenever the gauge is not under the control and constant surveillance of the licensee as required by 10 CFR 30.34(i).'' Accordingly, a violation of 10 CFR 30.34(i) constitutes a SL III violation for gauges having either no security or one level of security. The SL III significance is based largely on licensees' control of portable gauges to reduce the opportunity for unauthorized removal or theft and is the only example currently provided in the Policy for this type of violation.

When assessing the significance of a violation involving the failure to secure a portable gauge, the NRC considers that both physical controls must be defeated for the portable gauge to be removed. This deters a theft by requiring a more determined effort to remove the gauge. Considering that there is a reduced risk associated with having one barrier instead of no barrier, the NRC has determined that a graded approach is appropriate for 10 CFR 30.34(i) violations of lower significance. Therefore, the NRC believes that failures of one level of physical control to secure portable gauges warrant a SL IV designation. This graded approach was piloted in Enforcement Guidance Memoranda 11–004, dated April 28, 2011 (ADAMS Accession No. ML111170601). After over 2 years of monitoring, the NRC determined that the addition of the SL IV example did not increase the number of losses/thefts reported. Therefore, the NRC is revising violation example 6.3.c.3 and adding violation example 6.3.d.10:

Revisions

6.3.c.3: Except as provided for in section 6.3.d.10 of the policy, a licensee fails to secure a portable gauge as required by 10 CFR 30.34(i);

6.3.d.10: A licensee fails to secure a portable gauge as required by 10 CFR 30.34(i), whenever the gauge is not under the control and constant surveillance of the licensee, where one level of physical control existed and there was no actual loss of material, and that failure is not repetitive.

b. Section 6.5.c.4 and 5 SL III Violations Involve, for Example

The NRC modifies these examples (4 and 5) to reference the appropriate regulation governing changes to a facility referencing a certified design (*i.e.,* 10 CFR 52.98). This regulation refers to applicable change processes in the applicable design certification rule, which are currently contained in 10 CFR part 52, Appendix A–D.

Revisions

4. A licensee fails to obtain prior Commission approval required by 10 CFR 50.59 or 10 CFR 52.98 for a change that results in a condition evaluated as having low-to-moderate or greater safety significance; or

5. A licensee fails to update the FSAR as required by 10 CFR 50.71(e), and the FSAR is used to perform a 10 CFR 50.59 or 10 CFR 52.98 evaluation for a change to the facility or procedures, implemented without Commission approval, that results in a condition evaluated as having low-to-moderate or greater safety significance.

c. Section 6.5.d.5 SL IV Violations Involve, for Example

Example 6.5.d.5 was added to Section 6.9.d ''Inaccurate and Incomplete Information or Failure to Make a Required Report.''

d. Section 6.9 Inaccurate and Incomplete Information or Failure to Make a Required Report

Section 50.55(e)(3) requires holders of a construction permit or combined license (until the Commission makes the finding under 10 CFR 52.103(g)) to adopt procedures to evaluate deviations and failures to comply to ensure identification of defects and failures to comply associated with substantial safety hazards as soon as practicable. This section is similar to the reporting requirements of 10 CFR part 21. A SL II violation example was added; violation example 6.9.c.2.(a) was deleted; and the reference to 10 CFR 50.55(e) was moved to the revised 6.9.c.5 examples.

Revisions

b. SL II Violations Involve, for Example

8. A deliberate failure to notify the Commission as required by 10 CFR 50.55(e).

c. SL III Violations Involve, for Example

2.(a) Deleted ''failure to make required notifications and reports pursuant to 10 CFR 50.55(e);''

5. A failure to provide the notice required by 10 CFR part 21 or 10 CFR 50.55(e), for example:

(a) An inadequate review or failure to review such that, if an appropriate review had been made as required, a 10 CFR part 21 or 10 CFR 50.55(e) report would have been required; or

(b) A withholding of information or a failure to make a required interim report by 10 CFR 21.21, ''Notification of Failure to Comply or Existence of a Defect and Its Evaluation,'' or 10 CFR 50.55(e) occurs with careless disregard.

d. SL IV Violations Involve, for Example

12. A licensee fails to make an interim report required by 10 CFR 21.21(a)(2) or under 10 CFR 50.55(e);

13. Failure to implement adequate 10 CFR part 21 or 10 CFR 50.55(e) processes or procedures that has more than minor safety or security significance; or

14. A materials licensee fails to . . .

e. Section 6.9 ''Inaccurate and Incomplete Information or Failure to Make a Required Report''

The NRC is removing the reference to 10 CFR 26.719(d) in violation example 6.9.c.2.(c) because 10 CFR 26.719(d) is not a reporting requirement.

Revision

6.9.c.2.(b): Failure to make any report required by 10 CFR 73.71, ''Reporting of Safeguards Events,'' or Appendix G, ''Reportable Safeguards Events,'' to 10 CFR part 73 ''Physical Protection of Plants and Materials,'' or 10 CFR part 26, ''Fitness-For-Duty Programs;''

f. Section 6.11 ''Reactor, Independent Spent Fuel Storage Installation, Fuel Facility, and Special Nuclear Material Security''

The current Policy examples for a SL IV violation in Section 6.11.d are focused on the loss of special nuclear material (SNM) of low strategic significance. The loss of SNM is too narrow of a focus on the loss of material and not the other aspects of the Materials Control & Accountability (MC&A) program that could be a precursor to a loss of SNM. The Policy should include an example for the MC&A program at fuel facilities that covers the reduction in the ability to detect a loss or diversion of material which could lead to a more significant event. Therefore, the NRC is adding violation example 6.11.d.3 as follows.

Violation Example

6.11.d.3: A licensee fails to comply with an element of its material and accounting program that results in a fuel cycle facility procedure degradation regarding adequate detection or protection against loss, theft, or diversion of SNM.

g. Section 6.14 ''Fitness-For-Duty'' Violation Example 6.14.a.2

The NRC is incorporating violation example 6.14.a.2 into example 6.14.b.1. An employee assistance program (EAP) is one provision of many contained in 10 CFR part 26, subpart B, for which 6.14.a.1 applies. Therefore, the ''severity'' associated with an inadequate EAP is significantly less than that of a licensee not meeting ''two or more subparts of 10 CFR part 26.'' An ineffective implementation of an EAP does not directly result in an immediate safety or security concern and should not represent a SL I violation. Therefore, the NRC is deleting violation example 6.14.a.2 and modifying violation example 6.14.b.1.

Revision

6.14.a.2: Deleted.

6.14.b.1: A licensee fails to remove an individual from unescorted access status when this person has been involved in the sale, use, or possession of illegal drugs within the protected area, or a licensee fails to take action in the case of an on-duty misuse of alcohol, illegal drugs, prescription drugs, or over-the-counter medications or once the licensee identifies an individual that appears to be impaired or that their fitness is questionable, the licensee fails to take immediate actions to prevent the individual from performing the duties that require him or her to be subject to 10 CFR part 26;

h. Section 6.14 ''Fitness-For-Duty'' Violation Example 6.14.b.2

In violation example 6.14.b.2, the NRC is removing the language ''unfitness for duty based on drug or alcohol use.'' Regulations in 10 CFR part 26 do not define unfitness and the behavioral observation program is not limited to drug and alcohol impairment.

Revision

6.14.b.2: A licensee fails to take action to meet a regulation or a licensee behavior observation program requirement when observed behavior within the protected area or credible information concerning the activities of an individual indicates impairment by any substance, legal or illegal, or mental or physical impaired from any cause, which adversely affects their ability to safely and competently perform their duties.

i. Section 6.14 ''Fitness-For-Duty'' Violation Example 6.14.c.1

The NRC is revising violation example 6.14.c.1 to encompass more than positive drug and alcohol tests; it should include other aspects of the fitness-for-duty program such as subversions.

Revision

6.14.c.1: A licensee fails to take the required action for a person who has violated the licensee's Fitness-For-Duty Policy, in cases that do not amount to a SL II violation;

j. Section 6.14 ''Fitness-For-Duty'' Violation Example 6.14.c.5

Due to the revision to violation example 6.14.b.1, the NRC is revising violation example 6.14.c.5 to maintain a graded approach method to its violation example.

Revision

6.14.c.5: A licensee's employee assistance program (EAP) staff fails to notify licensee management when the EAP staff is aware that an individual's condition, based on the information known at the time, may adversely affect safety or security of the facility and the failure to notify did not result in a condition adverse to safety or security; or

5. Section 6.13 ''Information Security''

The NRC is revising Section 6.13, ''Information Security.'' This revision will replace the current examples, which are based on the classification levels of the information, with a risk-informed approach for assessing the severity of information security violations. This approach of evaluating the severity of information security violations by using a risk-informed process is based on the totality of the circumstances surrounding the information security violation and will more accurately reflect the severity of these types of violations and improve regulatory consistency.

This process is the result of lessons learned from a number of violations that the NRC has processed over the last few years based on varying significance levels. This process will use a flow chart and table approach, along with defined terms.

Once a noncompliance is identified, a four-step approach will be applied to determine the severity level of the violation. The four steps are: (1) Determine the significance of the information (*i.e.,* high, moderate, or low), (2) determine the extent of disclosure (*i.e.,* individual deemed trustworthy and reliable, unknown disclosure, or confirmed to an unauthorized individual), (3) determine the accessibility of the information (*i.e.,* how limited was access to the information), and (4) determine the duration of the noncompliance (*i.e.,* how long was the information available).

Once all steps are completed, the user will obtain a recommended severity level for the violation. The staff recognizes this approach as a change from the traditional violation examples; however, the process will be risk-informed and will consider the totality of circumstances surrounding the information disclosure. The risk-informed approach to information security violations adopted by the NRC should not be read to contradict the national policy on classified information as set forth in Executive Order 13526, ''Classified National Security Information.'' This first revision is located in the beginning of the last paragraph of Section 4.3 of the Policy. Two conforming revisions are being made to Section 6.12 of the Policy to delete examples that conflict with the revised approach.

Revisions

a. Section 4.3 Civil Penalties to Individuals

Section 6.13, ''Information Security,'' of this Policy provides a risk-informed approach for assessing the significance of information security violations.

b. Section 6.12 Materials Security

6.12.c.3: Deleted

6.12.d.10: Deleted

b. Violation example 6.13 *Information Security*

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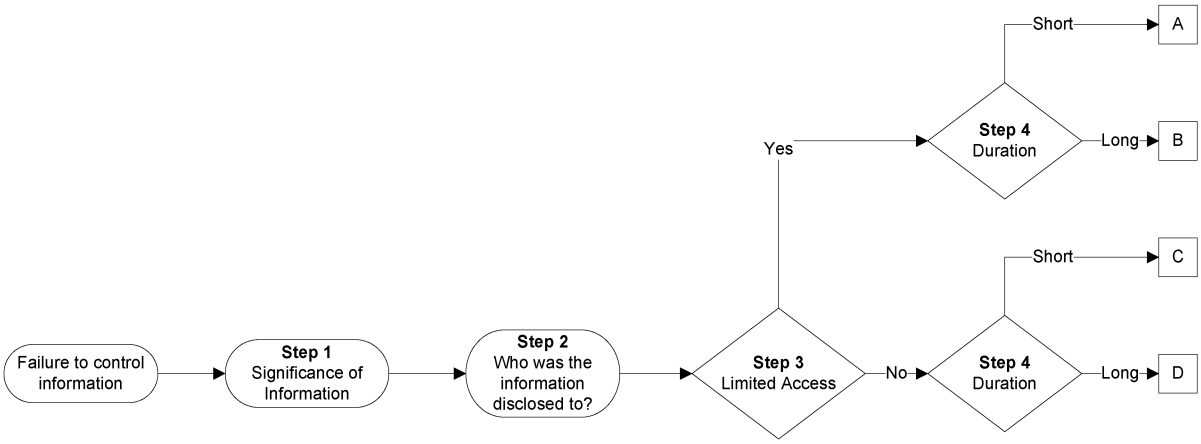

Step 2 Disclosure		Disclosed to an individual deemed Trustworthy and Reliable				Unknown Disclosure				Confirmed to an Unauthorized Individual			
		A	B	C	D	A	B	C	D	A	B	C	D
Step 1 Significance	High	SL III	SL III	SL III	SL II	SL III	SL II	SL II	SL II	SL II	SL II	SL II	SL I
	Moderate	SL IV	SL III	SL III	SL III	SL IV	SL III	SL III	SL III	SL III	SL III	SL III	SL I
	Low	SL IV	SL IV	SL IV	SL III	SL IV	SL IV	SL IV	SL III	SL III	SL III	SL III	SL II

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Step 1: Significance [1]—Describes the decision point to determine the significance of the disclosure as it relates to national security and/or common defense and security.

High Significance: The totality of information disclosed provides a significant amount of information about a technology (*i.e.,* key elements of a technology or system) or combinations of the following elements related to

[1] The significance guidance provided in Step 1 is only applicable within the context of the NRC's Enforcement Policy and its application. The significance guidance is not intended to define the ''harm'' that an unauthorized disclosure of SECRET or CONFIDENTIAL information is reasonably expected to cause as those definitions are set forth in Executive Order 13526, ''Classified National Security Information.'' Nothing in section 6.13 of the Enforcement Policy should be read to contradict the National Policy on classified information.

protective strategies: Response Strategy, Target Sets, Physical Security Plan, Contingency Plan or Integrated Response Plan. The information can be either SECRET or CONFIDENTIAL (National Security or Restricted Data) or Safeguards.

Moderate Significance: The totality of information disclosed provides limited information that may be useful to an adversary about technology information or physical security plan of a facility. The information can be either SECRET or CONFIDENTIAL (National Security or Restricted Data), Safeguards, or information requiring protection under 10 CFR part 37.

Low Significance: The totality of information disclosed, taken by itself, would not aid an adversary in gaining information about a technology or physical security plan of a facility. The information can be either SECRET or CONFIDENTIAL (National Security or Restricted Data), Safeguards, or information requiring protection under 10 CFR part 37.

Step 2: Disclosure—Describes the decision point to determine if: (a) The information was accessible to any individual(s) via hard copy format or electronic (*e.g.* computers) form, (b) you can determine who the individual(s) are, and (c) those individual(s) would meet the definition of Trustworthy and Reliable.

Trustworthy and Reliable (T&R): Are characteristics of an individual considered dependable in judgment, character, and performance, such that disclosure of information to that individual does not constitute an unreasonable risk to the public health and safety or common defense and security. A determination of T&R for this purpose is based upon the results from a background investigation or background check in accordance with 10 CFR 37.5 or 10 CFR 73.2, respectively. To meet the T&R requirement, the individual must possess a T&R determination before the disclosure of the information, regardless of the ''need to know'' determination. Note: In accordance with 10 CFR 73.21 or 73.59, there are designated categories of individuals that are relieved from fingerprinting, identification and criminal history checks and other elements of background checks.

Unknown Disclosure: Instances when controlled information has been secured, protected, or marked improperly but there is no evidence that anyone has accessed the information while it was improperly handled.

Confirmed: Instances where a person who does not have authorization to access controlled information gains access to the information.

Electronic Media/Confirmed: For electronic media it is considered confirmed once the information is no longer on an approved network for that type of information.

Unauthorized Individual: A person who does not possess a T&R determination and a need to know.

Step 3: Limited Access—Describes the decision point to determine the amount of controls (*e.g.,* doors, locks, barriers, firewalls, encryption levels) needed to enter or gain access to an area or computer system in order to obtain the disclosed security information.

Hard Copy Format: A location provides limited access if it meets all of the following conditions:

a. The area was locked or had access control measures, and;

b. individuals that frequented the area were part of a known population, and;

c. records of personnel entry were maintained to the area via key control or key card access.

Electronic Media: A computer network provides limited access if it meets all of the following conditions:

a. The information is stored in a location that is still within the licensee's computer network's firewall, and

b. the licensee has some type of control system in place which delineates who can access the information.

Step 4: Duration—Describes the decision point in which a time period determination is made regarding the number of days the information was not controlled properly in accordance with the respective handling and storage requirements of the security information.

Long: Greater than or equal to 14 days from the date of infraction to discovery of the non-compliance.

Short: Less than 14 days from the date of infraction to discovery of the non-compliance.

6. Glossary

a. Confirmatory Action Letter

Some agency procedures have not consistently described all Confirmatory Action Letter (CAL) recipients, according to an audit of the NRC's use of CALs. To date, all affected procedures have been revised to incorporate a consistent definition with the exception of the Policy. Therefore, the NRC is revising the Glossary term CAL to specifically state the recipients of a CAL.

Revision

Confirmatory Action Letter (CAL) is a letter confirming a licensee's, contractor's, or nonlicensee's (subject to NRC jurisdiction) voluntary agreement to take certain actions to remove significant concerns about health and safety, safeguards, or the environment.

c. Interim Enforcement Policy

The term Interim Enforcement Policy was added to the Glossary.

Revision

Interim Enforcement Policies (IEPs) refers to a policy that is developed by the NRC staff and approved by the Commission for specific topics, typically for a finite period. Generally, IEPs grant the staff permission to refrain from taking enforcement action for generic issues which are not currently addressed in the Policy and are typically effective until such time that formal guidance is developed and implemented or other resolution to the generic issue. IEPs can be found in Section 9.0 of the Policy.

d. Traditional Enforcement

The NRC is revising the definition of traditional enforcement for clarification purposes.

Revision

Traditional Enforcement, as used in this Policy, refers to the process for the disposition of violations of NRC requirements, including those that cannot be addressed only through the Operating Reactor Assessment Program. Traditional enforcement violations are assigned severity levels and typically include, but may not be limited to, those violations involving (1) actual safety and security consequences, (2) willfulness, (3) impeding the regulatory process, (4) discrimination, (5) violations not associated with ROP or cROP findings, (6) materials regulations, and (7) deliberate violations committed by individuals.

7. Miscellaneous Corrections/ Modifications

Note: The page numbers cited correspond with the newly revised Enforcement Policy.

a. Page 8: Subject to the same oversight as the regional offices, the Directors of the Office of Nuclear Reactor Regulation (NRR), the Office of Nuclear Material Safety and Safeguards (NMSS), the Office of New Reactors (NRO), and the Office of Nuclear Security and Incident Response (NSIR) may also approve, sign, and issue certain enforcement actions as delegated by the Director, OE. The Director, OE, has delegated authority to the Directors of NRR, NMSS, NRO, and NSIR to issue Orders not related to specific violations

of NRC requirements (*i.e.,* nonenforcement-related Orders.)

b. Page 9: The NRC reviews each case being considered for enforcement action on its own merits to ensure that the severity of a violation is characterized at the level appropriate to the safety or security significance of the particular violation.

Whenever possible, the NRC uses risk information in assessing the safety or security significance of violations and assigning severity levels. A higher severity level may be warranted for violations that have greater risk, safety, or security significance, while a lower severity level may be appropriate for issues that have lower risk, safety, or security significance.

c. Page 15: a. Licensees and Nonlicensees with a credited Corrective Action Program

d. Page 19: The flow chart (Figure 2) is a graphic representation of the civil penalty assessment process and should be used in conjunction with the narrative in this section.

e. Page 33: The NRC may refrain from issuing an NOV for a SL II, III, or IV violation that meets the above criteria, provided that the violation was caused by conduct that is not reasonably linked to the licensee's present performance (normally, violations that are at least 3 years old or violations occurring during plant construction) and that there had not been prior notice so that the licensee could not have reasonably identified the violation earlier.

f. Page 34: In addition, the NRC may refrain from issuing enforcement action for violations resulting from matters not within a licensee's control, such as equipment failures that were not avoidable by reasonable licensee QA measures or management controls (*e.g.,* reactor coolant system leakage that was not within the licensee's ability to detect during operation, but was identified at the first available opportunity or outage).

g. Page 43: 6.1.c.2 A system that is part of the primary success path and which functions or actuates to mitigate a DBA or transient that either assumes the failure of or presents a challenge to the integrity of the fission product barrier not being able to perform its licensing basis safety function because it is not fully qualified (per the IMC 0326, ''Operability Determinations & Functional Assessment for Conditions Adverse to Quality or Safety'') (*e.g.,* materials or components not environmentally qualified);

h. Page 43: 6.1.d.3 A licensee fails to update the FSAR as required by 10 CFR 50.71(e) and the lack of up-to-date information has a material impact on safety or licensed activities; or

i. Page 59: 6.7.d.3 ''A radiation dose rate in an unrestricted or controlled area exceeds 0.002 rem (0.02 millisieverts) in any 1 hour (2 mrem/hour) or 50 mrem (0.5 mSv) in a year;''

III. Procedural Requirements

Paperwork Reduction Act Statement

This policy statement does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget (OMB), approval number 3150–0136.

Public Protection Notification

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

Congressional Review Act

This policy is a rule as defined in the Congressional Review Act (5 U.S.C 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

Dated at Rockville, Maryland, this 1st day of November, 2016.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2016–26762 Filed 11–4–16; 8:45 am]

BILLING CODE 7590–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 747

RIN 3133–AE59

Civil Monetary Penalty Inflation Adjustment

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: On June 21, 2016, the NCUA Board (Board) published an interim final rule amending its regulations to adjust the maximum amount of each civil monetary penalty (CMP) within its jurisdiction to account for inflation. This action, including the amount of the adjustments, is required under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. This final rule confirms those amendments while making a clarification regarding the prospective effect of the 2015 legislation.

DATES: Effective date: November 7, 2016.

FOR FURTHER INFORMATION CONTACT: Ian Marenna, Senior Trial Attorney, at 1775 Duke Street, Alexandria, VA 22314, or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

I. Background
II. Regulatory Procedures

I. Background

A. June 2016 Interim Final Rule

The Debt Collection Improvement Act of 1996 [1] (DCIA) amended the Federal Civil Penalties Inflation Adjustment Act of 1990 [2] (FCPIA Act) to require every federal agency to enact regulations that adjust each CMP provided by law under its jurisdiction by the rate of inflation at least once every four years. In November 2015, Congress further amended the CMP inflation requirements in the Bipartisan Budget Act of 2015,[3] which contains the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 amendments).[4] This legislation provides for an initial ''catch-up'' adjustment of CMPs in 2016, followed by annual adjustments. The catch-up adjustment re-sets CMP maximum amounts by setting aside the inflation adjustments that agencies made in prior years and instead calculating inflation with reference to the year when each CMP was enacted or last modified by Congress. For 2017 and subsequent years, the Board will be required to adjust maximum levels to account for annual inflation.[5]

On June 21, 2016, in compliance with the 2015 amendments, the Board published an interim final rule with a request for comments in the **Federal Register**.[6] In calculating the adjustments, the Board reviewed and applied government-wide guidance issued by the Office of Management and Budget (OMB).[7] In accordance with the

[1] Public Law 104–134, sec. 31001(s), 110 Stat. 1321–373 (Apr. 26, 1996). The law is codified at 28 U.S.C. 2461 note.

[2] Public Law 101–410, 104 Stat. 890 (Oct. 5, 1990), also codified at 28 U.S.C. 2461 note.

[3] Public Law 114–74, 129 Stat. 584 (Nov. 2, 2015).

[4] 129 Stat. 599.

[5] Public Law 114–74, 129 Stat. 584 (Nov. 2, 2015).

[6] 81 FR 40152 (June 21, 2016).

[7] Office of Mgmt. & Budget, Exec. Office of the President, OMB Memorandum No. M–16–06, Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2016).

procedures and calculations prescribed by the 2015 amendments and OMB's guidance, the Board adjusted the maximum level of each of the CMPs that NCUA has authority to assess. NCUA is not, however, required to assess at the new maximum levels and retains discretion to assess at lower levels, as it has done historically.[8]

The interim final rule became effective on July 21, 2016. The Board received no comments on the rule.

B. Prospective Effect of Adjustments

Although the Board received no comments on the interim final rule, it wishes to clarify its intended use of adjusted maximums for violations that occurred prior to the adjustment. As described in the interim final rule, the 2015 amendments provide that increased maximum CMP amounts apply to penalties assessed after the adjustments take effect, including those for which the associated violation occurred before the adjustment became effective.[9] The Board adopted this provision in the interim final rule consistent with the statute.[10]

The Board has observed that agencies have appeared to vary in their adoption of this provision. Some agencies' interim final rules provide that the adjusted maximums apply only to violations occurring after November 2, 2015, when the 2015 amendments became law.[11] Other agencies' rules, like the NCUA's interim final rule, do not specify whether the adjusted maximums would apply to violations that occurred before the 2015 amendments were enacted.[12] To avoid confusion, the Board clarifies that it interprets the 2015 amendments as applying only prospectively. If NCUA assesses CMPs at the maximum level, it would not apply the new maximums to violations that occurred before the statute was amended on November 2, 2015. As noted above, nothing in the 2015 amendments or the final rule requires application of maximum-level CMPs. Further, as explained in the interim final rule, NCUA generally must consider mitigating factors, including financial resources, in assessing a CMP.[13]

Apart from this clarification, the Board adopts the interim final rule as final without changes.

II. Regulatory Procedures

Section III of the Supplementary Information in the June 2016 interim final rule sets forth the Board's analyses under the Administrative Procedure Act, the Regulatory Flexibility Act, the Paperwork Reduction Act of 1995, the Small Business Enforcement Fairness Act, Executive Order 13132, and the Treasury and General Government Appropriations Act. *See* 81 FR 40156–40157. Because the final rule confirms the interim final rule and does not alter the substance of the analyses and determinations accompanying the interim final rule, the Board continues to rely on those analyses and determinations for purposes of this rulemaking. The Board notes that OMB determined that the interim final rule is not a ''major rule'' within the meaning of the Small Business Enforcement Fairness Act.

List of Subjects in 12 CFR Part 747

Credit unions, Civil monetary penalties.

By the National Credit Union Administration Board on October 27, 2016.

Gerard S. Poliquin,

Secretary of the Board.

For the reasons stated above, the interim final rule amending 12 CFR part 747, published at 81 FR 40152 (June 21, 2016), is adopted as a final rule without change.

[FR Doc. 2016–26712 Filed 11–4–16; 8:45 am]

BILLING CODE 7535–01–P

[8] 81 FR 40152, 40156 (June 21, 2016).

[9] Public Law 114–74, 129 Stat. 600 (Nov. 2, 2015), codified at 28 U.S.C. 2461 note.

[10] 81 FR 40152, 40156 (June 21, 2016).

[11] See, *e.g.,* Dep't of Justice, Civil Monetary Penalties Inflation Adjustment, 81 FR 42491, 42499 June 30, 2106).

[12] See, *e.g.,* Dep't of Defense, Civil Monetary Penalty Inflation Adjustment, 81 FR 33389, 33390 (May 26, 2016).

[13] 81 FR 40152, 40156 (June 21, 2016).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2015–2776; Airspace Docket No. 15–AEA–5]

RIN 2120–AA66

Amendment and Establishment of Restricted Areas; Chincoteague Inlet, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action expands the restricted airspace at Chincoteague Inlet, VA, to support the National Aeronautics and Space Administration's (NASA) Wallops Island Flight Facility (WFF) test requirements. This action adds 3 new restricted areas, designated R–6604C, R–6604D, and R–6604E. Additionally, a minor change is made to 2 points in the boundary of existing area R–6604A to match the updated 3-nautical mile (NM) line from the shoreline of the United States (U.S.) as provided by the National Oceanic and Atmospheric Administration (NOAA).

DATES: Effective date 0901 UTC, January 5, 2017.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Policy Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the 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 restructures the restricted airspace at Chincoteague Inlet, VA to enhance aviation safety and accommodate essential NASA testing programs.

History

On September 10, 2015, the FAA published in the **Federal Register** a notice proposing to expand the restricted airspace at Chincoteague Inlet, VA, to support NASA's WFF test requirements (80 FR 54444), Docket No. FAA–2015–2776. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. Due to an error, a chart depicting the proposed areas was not posted to the regulations.gov Web site for public viewing until November 5, 2015 (10 days after the close of the comment period). Consequently, on January 21, 2016, the FAA published a notice reopening the comment period for 30 additional days (81 FR 3353), Docket No. FAA–2015–2776, to provide the public the opportunity to view the chart and submit comments.

Discussion of Comments

A total of 17 comments were received, including 2 duplicate submissions.

Eight commenters expressed support for the proposal. Several of the supporters wrote that restricted areas R–6604D and R–6604E abut, but do not include, VOR Federal airway V–139, concluding, when those areas are in use, air traffic can continue to flow unimpeded on the airway.

FAA Response. VOR Federal airways, such as V–139 consist of that airspace within 4–NM either side of the airway centerline. R–6604D and R–6604E essentially abut the centerline of V–139, which means they infringe upon the 4–NM width on the east side of the airway centerline. Therefore, the airway would be unusable below 4,000 feet MSL when either R–6604D or R–6604E is active. When the restricted areas are active, instrument flight rules (IFR) traffic must use the airway at or above 4,000 feet MSL. Otherwise, they must be vectored to remain clear of the active restricted areas or navigate by other airways. As an alternative, pilots flying northeast-bound could use V–1 or V–139 to the Cape Charles VORTAC (CCV), VA, then fly V–1 to the Waterloo VOR/DME (ATR), DE, then V–308 to the Sea Isle VORTAC (SIE), NJ, then rejoin V–139. This alternative would only add about 2–NM to the route of flight. Conversely, southwest-bound traffic could fly V–139 to the Sea Isle VORTAC, then follow the reverse of the routing shown above and rejoin V–139 at the Cape Charles VORTAC. Air Traffic Control (ATC) will ensure IFR traffic filed via V–139 is separated from active restricted airspace by means of altitude assignment, route clearance, or radar vectors.

VFR pilots who elect to navigate via V–139 would have to fly above the restricted areas at the appropriate VFR cruising altitude for the direction of flight. VFR cruising altitudes are ''odd thousands plus 500 feet for northeast-bound traffic and even thousands plus 500 feet for southwest-bound traffic. Therefore, for VFR traffic navigating on V–139 (when the restricted areas are active), the lowest available altitudes would be 5,500 feet MSL for northeast-bound traffic; and 4,500 feet MSL for southwest-bound traffic. VFR aircraft may also elect to deviate around the restricted airspace or use the alternate routing described above. ATC will continue to provide VFR flight advisories throughout the airspace on a workload permitting basis. When the restricted areas are not active, V–139 is fully available for air traffic. These restricted areas are expected to receive limited usage on an annual basis.

Seven commenters stated additional concerns about the proposal, which are discussed below.

The Aircraft Owners and Pilots Association (AOPA) wrote that the published feeder route from the Snow Hill VORTAC to the GOBYO initial approach fix, serving the GPS approach to runway 32 at Ocean City Municipal Airport, MD, (KOXB), would be unavailable during the time R–6604D is activated. This would reduce the efficiency provided by the feeder route increasing the likelihood of pilots flying longer distances with increased fuel consumption and costs to the operator.

FAA Response. ATC will offset this impact by either clearing the aircraft to GOBYO at 4,000 feet MSL or above, or vectoring the aircraft a short distance around the restricted areas.

AOPA noted that the need to circumnavigate the restricted areas, when active, would also affect pilots operating under VFR. When active, the new restricted areas would render as unavailable key VFR landmarks, such as U.S. Route 13, railroad tracks and the seashore, that are used by VFR pilots who navigate without GPS or navigation aids and who fly at lower altitudes. AOPA said that avoiding the restricted areas by flying to the east, over open water, would be dangerous for single-engine, shoreline-following pilots, and it would be time consuming for those diverting around the complex to the west. AOPA requested that stand-alone VFR waypoints be charted in the Chincoteague area to assist pilots unfamiliar with the area to safely navigate around the restricted areas.

The FAA agrees and will develop charted VFR waypoints to assist VFR aircraft in avoiding the restricted areas. When the restricted areas are not in use, the above mentioned landmarks would remain available for VFR navigation.

AOPA advised that, since the new restricted areas are close to numerous final approach courses of surrounding airports, they must be depicted on applicable Instrument Approach Procedure Charts to increase pilot awareness.

The FAA agrees and is taking action to depict the new restricted areas on applicable instrument procedure charts.

AOPA noted that the proposed restricted areas would be activated ''By NOTAM,'' but the NPRM did not indicate how far in advance the NOTAM should be issued. AOPA recommended at least 12 hours notice is necessary to assist pilots in flight planning.

NASA agreed to revise the time of designation for R–6604C, D and E to read ''By NOTAM at least 12 hours in advance.''

The Helicopter Association International (HAI) wrote that it was unable to support the proposed changes. HAI said that the restricted area expansion would impact both IFR and VFR operators. Helicopter operators would be required to either fly further offshore for longer periods to circumnavigate the area, or fly further west into a more tightly congested corridor. HAI is concerned with the offshore option, especially during winter when lower sea temperatures would greatly reduce aircrew survivability times if an emergency resulted in a water entry. Further, the increased minimum altitudes to overfly R–6604D and R–6604E could force helicopter operators higher and subject them to increased encounters with icing conditions.

FAA Response. Helicopter operators would have the option to avoid the restricted areas via the alternate routing discussed above or by use of the VFR waypoints being developed for that purpose. Additionally, the limited projected annual use of the areas described previously should lessen the potential impacts on helicopter operations. Further, NASA has agreed to promptly release the restricted areas to ATC for active medevac or search and rescue helicopter operations.

One commenter contended that a requirement for restricted airspace was not established and suggested the use of a less restrictive type of special use airspace (SUA) such as a warning area. The commenter believes that the proposal did not justify why SUA must be established over land for this purpose and that establishing test airspace over water adjacent to Wallops should be considered before establishing SUA over land.

FAA Response. NASA proposed the restricted area expansion to accommodate a variety of test activities that pose a hazard to nonparticipating aircraft. These activities include, but are not limited to, high-risk test profiles by heavily modified test aircraft, testing of emitters that could induce harmful electromagnetic interference effects on nonparticipating aircraft, non-eye-safe laser firings, and external stores separation testing. Warning areas may also contain hazardous activities and they are established offshore. However, while warning areas serve notice of the possible existence of hazardous activities, they do not restrict access by nonparticipating aircraft that elect to transit the airspace. There is an existing warning area, W–386, located offshore near WFF, but this area is delegated to the U.S. Navy which has its own requirements and scheduling priorities. NASA does use the overwater SUA to the extent possible, but some test

operations require overland airspace in close proximity to an airfield. NASA's restricted area proposal was designed for this specific purpose.

During the design of the proposal, other types of SUA were considered but deemed insufficient for ensuring safety during NASA's flight test operations. Use of nearby existing restricted areas were not an option due to technical requirements (co-use airspace versus exclusive-use airspace; travel distance to the SUA) as well as the dynamic nature of NASA's flight test program. For example, the vast majority of the Patuxent River Naval Air Station's restricted areas are not exclusive use. The parts of the Patuxent River restricted area complex that could be scheduled as exclusive use are in high demand and used for priority Department of Defense requirements. It would be highly unlikely that NASA would be granted access to this airspace, especially given the dynamic operations schedule.

In this case, the FAA has determined that the restricted area expansion is the appropriate SUA designation to contain NASA's hazardous activities in order to ensure segregation of those activities from nonparticipating aircraft.

Several commenters pointed out that this is very busy airspace used by commercial and private flights. They contended that there is sufficient airspace for testing in other parts of the country.

FAA Response. NASA operates a wide variety of highly modified aircraft at WFF in support of various test missions. The configuration of each aircraft changes often as dictated by the specific test program and the engineering and physical modification work that takes place at WFF. Further, in addition to facilities supporting aircraft operations, the infrastructure in place at WFF includes the communications, telemetry, radar tracking, and flight path guidance necessary to fulfill NASA's testing commitments. It would be impractical and not cost effective to relocate infrastructure and testing operations to another location. In addition, at other locations, NASA testing would be competing for access to airspace and that would adversely impact NASA test programs. The design and projected use of the expanded restricted areas should minimize the impacts on other users of the National Airspace System.

One commenter expressed concern about pilots being able to reliably and quickly determine the activity status of the restricted areas from air traffic control.

FAA Response. In the NPRM, Patuxent River Approach Control was proposed as the controlling agency for R–6604C, D and E. The FAA has since decided that Washington ARTCC, which is the controlling agency for the existing R–6604A and B, should also be the controlling agency for the new restricted areas. The controlling agency typically coordinates SUA status with the using agency and is the primary source for pilots to determine activity status of the airspace at any given time. The ''Special Use Airspace Tabulation'' on the Washington Sectional Aeronautical Chart currently lists Washington ARTCC as the controlling agency for R–6604A and B. The tabulation also includes area altitudes, time of use and contact frequencies. The tabulation will be updated to include information for R–6604C, D and E. In addition, the requirement that R–6604C, D and E must be activated by a NOTAM issued at least 12 hours in advance should assist pilots in flight planning.

Other Impacts

The FAA identified several other potential impacts. First, when R–6604E is active, it would encroach into the protected airspace for the RNAV (GPS) approach to runway 21 at Accomack County Airport, Melfa, VA, (KMFV). There are several options to address this issue: ATC can provide radar vectors to runway 21; the aircraft could be cleared for the VOR/DME RWY 3 or the LOC RWY 3 approach with a circle to land runway 21; or ATC can temporarily recall a portion of R–6604E to restrict NASA aircraft to a minimum altitude of 2,500 feet MSL or above, allowing aircraft on the approach to fly underneath. Once the traffic on approach is clear, the airspace would be returned to the user. This latter provision would be included in the Letter of Procedure between the FAA and NASA that governs use of the restricted areas.

Second, the protected airspace for the missed approach procedure for the RNAV (GPS) RWY 3 approach at Accomack County Airport would be impacted when R–6604E is active.

FAA plans to amend the missed approach procedure for the RNAV (GPS) RWY 3 approach. In the interim, the VOR/DME RWY 3 approach is available. The missed approach for that procedure does not conflict with the restricted area. Also, as described above, ATC can restrict aircraft operating in R–6604E to a minimum altitude that permits IFR traffic to fly the approach beneath.

Third, Midway Airport (VG56), a private-use airport near Bloxom, VA, would be impacted by the expansion. Midway is located below R–6604E. The VFR traffic patterns and access to and from the airport would be affected unless operations are coordinated. NASA has agreed to establish a Letter of Agreement with airport operators to minimize impact to the private airports south of the WFF.

Differences From the NPRM

The time of designation for R–6604C, D and E was proposed in the NPRM as ''By NOTAM.'' In response to comments received, the time of designation is changed to read ''By NOTAM at least 12 hours in advance.''

The controlling agency for R–6604C, D and E was proposed as Patuxent River Approach Control. The FAA determined that Washington ARTCC will be the controlling agency for all R–6604 subareas (A through E).

The Rule

The FAA is amending 14 CFR part 73 by establishing 3 new restricted areas, designated R–6604C, R–6604D and R–6604E, at NASA's WFF in Virginia. The new areas abut the existing restricted areas (R–6604A and R–6604B) and will be used to contain a variety of test activities deemed to pose a hazard to nonparticipating aircraft. The following is a general description of the areas.

R–6604C overlies the WFF airfield and is contained entirely within the WFF property boundary. It extends from the surface up to 3,500 feet mean sea level (MSL). Expected usage will be approximately 1.5 hours per day (in 45-minute periods) on approximately 120 days per year, totaling approximately 180 hours per year.

R–6604D is extends from 100 feet above ground level (AGL) up to 3,500 feet MSL. It is located between the western boundary of R–6604B and the centerline of VOR Federal airway V–139, extending approximately 15–NM to the northeast of the R–6604A/R–6604B northern boundary. Expected usage will also be approximately 1.5 hours per day (in 45-minute periods) on approximately 120 days per year, totaling approximately 180 hours per year.

R–6604E extends from 700 feet AGL up to 3,500 feet MSL. It is located between the western boundaries of R–6604A and R–6604B and the centerline of VOR Federal airway V–139. Expected usage will be approximately 1.5 hours per day (in 45-minute periods) on approximately 40 days per year, totaling approximately 60 hours per year.

All 3 areas would be activated by a Notice to Airmen (NOTAM) to be issued at least 12 hours in advance. Specific times of designation were not assigned

for R–6604C, D and E due to the variable nature of test programs.

In addition to the above, 2 points in the boundary of R–6604A that intersect a line 3–NM from the shoreline of the U.S. are adjusted to reflect NOAA's updated calculation of the U.S. shoreline. The rest of the R–6604A description is unchanged.

The configuration of the restricted areas was designed to allow for activation of only that portion of the complex required for the specific test profile being conducted. As is the current practice with R–6604A and R–6604B, when the new restricted areas are not required by the using agency, the airspace will be returned to the controlling agency for access by other aviation users.

Note that the existing areas (R–6604A and R–6604B) will continue to be used, as in the past, for missile and rocket launches, aircraft systems development, expendable launch vehicles, lasers, RPV, and other test programs.

The FAA is taking this action because the existing restricted airspace is too small to fully contain hazardous test profiles conducted by NASA's WFF.

Operational Note: Considering their location, it is important that the new areas be depicted on both the IFR en route chart (L–36) and the VFR chart covering the affected area before they are activated for use. Due to aeronautical chart publication cycles, the publication dates for the applicable IFR and VFR charts are not the same. The effective date of this rule is January 5, 2017, to ensure the airspace will also be depicted on the IFR en route chart, which publishes on that date. However, the new areas will not be available for use or activation by NASA until they also appear on the next edition of the Washington Sectional Aeronautical Chart, which publishes on February 2, 2017.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has conducted an environmental review for this rulemaking in accordance with FAA Order 1050.1F, *Environmental Impacts: Policies and Procedures,* the National Environmental Policy Act, and its implementing regulations at 40 CFR parts 1500–1508. FAA's environmental impact review included an independent evaluation and adoption of NASA's Final Environmental Assessment for the Establishment of Restricted Area Airspace (R–6604C/D/E) at Goddard Space Flight Center, Wallops Flight Facility, Wallops Island, Virginia, dated October 2016 (hereinafter ''the FEA''), for which the FAA was a cooperating agency, and which included the environmental analysis of the expanded restricted airspace at Chincoteague Inlet, VA, to support NASA's Wallops Island Flight Facility (WFF) test requirements consisting of the addition of three new restricted areas, designated R–6604C, R–6604D, and R–6604E, and a minor change to two points in the boundary of existing area R–6604A to match the updated 3-nautical mile (NM) line from the shoreline of the U.S. as provided by NOAA, and as described above. Based on its environmental review, the FAA has determined that the action that is the subject of this rule does not present the potential for significant impacts to the human environment. The FAA's Adoption EA and FONSI–ROD are included in the docket for this rulemaking. The FEA is available at *https://sites.wff.nasa.gov/code250/Establishment_R-6604CDE_DEA.html.*

List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 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.

§ 73.66 [Amended]

■ 2. Section 73.66 is amended as follows:

* * * * *

R–6604A Chincoteague Inlet, VA [Amended]

By removing the current boundaries and inserting the following in its place:

Boundaries. Beginning at lat. 37°55′25″ N., long. 75°24′54″ W.; to lat. 37°51′31″ N., long.75°17′16″ W.; then along a line 3–NM from and parallel to the shoreline to lat. 37°39′20″ N., long. 75°31′19″ W.; to lat. 37°47′00″ N., long. 75°31′18″ W.; to lat. 37°51′00″ N., long. 75°29′36″ W.; to the point of beginning.

R–6604C Chincoteague Inlet, VA [New]

Boundaries. Beginning at lat. 37°56′57″ N., long. 75°28′37″ W.; to lat. 37°56′54″ N., long. 75°26′56″ W.; to lat. 37°56′23″ N., long. 75°26′46″ W.; to lat. 37°56′45″ N., long. 75°27′29″ W.; to lat. 37°55′15″ N., long. 75°28′23″ W.; to lat. 37°55′15″ N., long. 75°28′39″ W.; to lat. 37°56′32″ N., long. 75°29′18″ W.; to the point of beginning.

Designated altitudes. Surface to 3,500 feet MSL.

Time of designation. By NOTAM at least 12 hours in advance.

Controlling agency. FAA, Washington ARTCC.

Using agency. Chief, Wallops Station, National Aeronautics and Space Administration, Wallops Island, VA.

R–6604D Chincoteague Inlet, VA [New] Boundaries

Beginning at lat. 38°01′42″ N., long. 75°29′28″ W.; to lat. 38°07′12″ N., long. 75°14′48″ W.; to lat. 38°04′36″ N., long. 75°08′07″ W.; thence along a line 3–NM from and parallel to the shoreline to lat. 37°51′31″ N., long. 75°17′16″ W.; to lat. 37°56′45″ N., long. 75°27′29″ W.; to lat. 37°53′55″ N., long. 75°29′11″ W.; to lat. 37°55′40″ N., long. 75°33′27″ W.; to the point of beginning; excluding R–6604C.

Designated altitudes. 100 feet AGL to 3,500 feet MSL.

Time of designation. By NOTAM at least 12 hours in advance.

Controlling agency. FAA, Washington ARTCC.

Using agency. Chief, Wallops Station, National Aeronautics and Space Administration, Wallops Island, VA.

R–6604E Chincoteague Inlet, VA [New]

Boundaries. Beginning at lat. 37°55′40″ N., long. 75°33′27″ W.; to lat. 37°53′55″ N., long. 75°29′11″ W.; to lat. 37°50′24″ N., long. 75°31′19″ W.; to lat. 37°39′20″ N., long. 75°31′19″ W.; to lat. 37°38′57″ N., long. 75°31′31″ W.; to lat. 37°46′55″ N., long. 75°39′13″ W.; to the point of beginning.

Designated altitudes. 700 feet AGL to 3,500 feet MSL.

Time of designation. By NOTAM at least 12 hours in advance.

Controlling agency. FAA, Washington ARTCC.

Using agency. Chief, Wallops Station, National Aeronautics and Space Administration, Wallops Island, VA.

* * * * *

Issued in Washington, DC on November 1, 2016.

Leslie M. Swann,

Acting Manager, Airspace Policy Group.

[FR Doc. 2016–26760 Filed 11–4–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

[Docket No. FDA–2012–N–0222]

Revision of Organization and Conforming Changes to Regulation

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing this final rule to amend the regulations to reflect organization change in the Agency and to make other conforming changes. This action is editorial in nature and is intended to improve the accuracy of the Agency's regulations.

DATES: This rule is effective November 7, 2016.

FOR FURTHER INFORMATION CONTACT: Vanessa Starks, Management Analysis Services Staff, Food and Drug Administration, 11601 Landsdown St., 3WFN—5th Floor, Rm. 05D12, North Bethesda, MD 20857.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is issuing this final rule to amend its regulations by updating the organizational information in part 5 (21 CFR part 5).

The portion of this final rule updating the organizational information in part 5, subpart M, is a rule of Agency organization, procedure, or practice. FDA is issuing these provisions as a final rule without publishing a general notice of proposed rulemaking because such notice is not required for rules of Agency organization, procedure, or practice under 5 U.S.C. 553(b)(3)(A). For the conforming changes to the other regulations, the Agency finds good cause under 5 U.S.C. 553(b)(3)(B) to dispense with prior notice and comment, and good cause under 5 U.S.C. 553(d)(3) to make these conforming changes effective less than 30 days after publication because such notice and comment and delayed effective date are unnecessary and contrary to the public interest. These changes do not result in any substantive change in the regulations.

II. Economic Analysis of Impacts

We have examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct us to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). We have developed a comprehensive Economic Analysis of Impacts that assesses the impacts of the final rule. We believe that this final rule is not a significant regulatory action under Executive Order 12866.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this rule simply updates the organizational information, it does not impose any additional costs on industry. Consequently, the Agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before issuing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $146 million, using the most current (2015) Implicit Price Deflator for the Gross Domestic Product. This final rule would not result in an expenditure in any year that meets or exceeds this amount.

III. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

IV. Analysis of Environmental Impact

We have determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Federalism

We have analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that 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. Accordingly we conclude that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority of the Commissioner of Food and Drugs, 21 CFR part 5 is revised to read as follows:

PART 5—ORGANIZATION

■ 1. The authority citation for part 5 continues to read as follows:

Authority: 5 U.S.C. 552; 21 U.S.C. 301–397.

■ 2. Revise § 5.1100 to read as follows:

§ 5.1100 Headquarters.

Office of the Commissioner.[1]
Office of the Chief Counsel.
Office of the Executive Secretariat.
Freedom of Information Staff.
Dockets Management Staff.
Office of the Chief Scientist.[1]
Office of Counter-Terrorism and Emerging Threats.
Office of Scientific Integrity.
Office of Regulatory Science and Innovation.
Division of Science Innovation and Critical Path.
Division of Scientific Computing and Medical Information.
Office of Scientific Professional Development.
Office of Health Informatics.

[1] Mailing address: 10903 New Hampshire Ave., Silver Spring, MD 20993.

Office of Women's Health.
Office of External Affairs.
Office of Media Affairs.
Office of Communications.
Office of Health and Constituent Affairs.
Office of Minority Health.
National Center for Toxicological Research.[2]
Office of the Center Director.
Office of Management.
Office of Research.
Division of Biochemical Toxicology.
Division of Genetic and Molecular Toxicology.
Division of Microbiology.
Division of Systems Biology.
Division of Neurotoxicology.
Division of Bioinformatics and Biostatistics.
Office of Scientific Coordination.
Office of Foods and Veterinary Medicine.[3]
Communications and Public Engagement Staff.
Executive Secretariat Staff.
Office of Resource Planning and Strategic Management.
Strategic Planning and Budget Formulation Staff.
Risk Analytics Staff.
Office of Coordinated Outbreak Response and Evaluation Network.[4]
Prevention Staff.
Response Staff.
Center for Food Safety and Applied Nutrition.[5]
Office of the Center Director.
International Affairs Staff.
Executive Operations Staff.
Office of Management.
Safety Staff.
Division of Budget & Planning.
Division of Program Services.
Office of Analytics and Outreach.
Food Defense and Emergency Coordination Staff.
Biostatistics and Bioinformatics Staff.
Division of Education, Outreach and Information.
Education and Outreach Branch.
Information Center Branch.
Web Branch.
Division of Public Health Informatics and Analytics.
Epidemiology and Surveillance Branch.
Signals Management Branch.
Consumers Studies Branch.
Division of Risk and Decision Analysis.
Risk Analysis Branch.
Contaminant Assessment Branch.
Exposure Assessment Branch.
Office of Food Safety.
Retail Food Production Staff.
Multi-Commodity Foods Staff.
Division of Seafood Science and Technology.
Chemical Hazard Science Branch.
Microbiological Hazards Science Branch.
Division of Food Processing Science & Technology.
Process Engineering Branch.
Food Technology Branch.
Division of Plant and Dairy Food Safety.
Plant Products Branch.
Dairy and Egg Branch.
Division of Seafood Safety.
Shellfish and Aquaculture Policy Branch.
Seafood Processing and Technology Policy Branch.
Division of Produce Safety.
Fresh Produce Branch.
Processed Produce Branch.
Division of Dairy, Egg, and Meat Products.
Milk and Milk Products Branch.
Egg and Meat Products Branch.
Division of Plant Products and Beverages.
Plant Products Branch.
Beverages Branch.
Office of Cosmetics and Colors.
Division of Color Certification and Technology.
Division of Cosmetics.
Office of Regulatory Science.
Division of Analytical Chemistry.
Methods Development Branch.
Spectroscopy and Mass Spectrometry Branch.
Division of Microbiology.
Microbial Methods and Development Branch.
Molecular Methods and Subtyping Branch.
Division of Bioanalytical Chemistry.
Chemical Contaminants Branch.
Bioanalytical Methods Branch.
Office of Food Additive Safety.
Division of Food Contract Notifications.
Division of Biotechnology and GRAS Notice Review.
Division of Petition Review.
Office of Compliance.
Division of Enforcement.
Division of Field Programs and Guidance.
Office of Applied Research and Safety Assessment.
Division of Molecular Biology.
Division of Virulence Assessment.
Virulence Mechanisms Branch.
Immunobiology Branch.
Division of Toxicology.
Office of Regulations, Policy and Social Sciences.
Regulations and Special Government Employee Management Staff.
Division of Social Sciences.
Office of Nutrition and Food Labeling.
Food Labeling and Standards Staff.
Nutrition Programs Staff.
Office of Dietary Supplement Program.
Evaluation and Research Staff.
Regulatory Implementation Staff.
Center for Veterinary Medicine.[6]
Office of the Center Director.
Office of Management.
Program and Resources Management Staff.
Human Capital Management Staff.
Talent Development Staff.
Management Logistics Staff.
Budget Planning and Evaluation Staff.
Office of New Animal Drug Evaluation.
Division of Therapeutic Drugs for Food Animals.
Division of Production Drugs.
Division of Therapeutic Drugs for Non-Food Animals.
Division of Human Food Safety.
Division of Manufacturing Technologies.
Division of Scientific Support.
Division of Generic Animal Drugs.
Division of Business Information Science and Management.
Office of Surveillance and Compliance.
Division of Surveillance.
Division of Animal Feeds.
Division of Compliance.
Division of Veterinary Product Safety.
Office of Research.
Division of Residue Chemistry.
Division of Applied Veterinary Research.
Division of Animal and Food Microbiology.
Office of Minor Use and Minor Species Animal Drug Development.
OFFICE OF MEDICAL PRODUCTS AND TOBACCO
Office of Medical Products and Tobacco—Immediate Office.[7]
Office of Special Medical Programs—Immediate Office.[8]
Advisory Committee Oversight and Management Staff.
Good Clinical Practice Staff.
Office of Pediatric Therapeutics.
Office of Orphan Products Development.
Office of Combination Products.
Center for Biologics Evaluation and Research.[9]

[2] Mailing address: Food and Drug Administration, 3900 NCTR Rd., Jefferson, AR 72079.

[3] Mailing address: Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993.

[4] Mailing address: 4300 River Rd., University Station (HFS–015), College Park, MD 20740.

[5] Mailing address: Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740.

[6] Mailing address: Food and Drug Administration, 7519 Standish Pl., Rockville MD 20855.

[7] Mailing address: 10903 New Hampshire Ave., Bldg. 1, Silver Spring, MD 20993.

[8] Mailing address: 10903 New Hampshire Ave., Bldg. 32, Silver Spring, MD 20993.

[9] Mailing address: 10903 New Hampshire Ave., Bldg. 71, Silver Spring, MD 20993.

Office of the Center Director.
Executive Operations Staff.
Regulatory Information Management Staff.
Regulations and Policy Staff.
Records Management Staff.
Bioinformatics Support Staff.
Business Operations Staff.
Office of Management.
Planning and Performance Management Staff.
Division of Program Services.
Program Operations Branch.
Program Services Branch.
Division of Budget and Resource Management.
Budget Analysis and Formulation Branch.
Resource Management Branch.
Division of Program Services.
Building Operations Staff.
Program Management Services Branch.
Program Operations Branch.
Division of Scientific Advisors and Consultants.
Division of Veterinary Services.
Office of Compliance and Biologics Quality.
Division of Case Management.
Blood and Tissue Compliance Branch.
Advertising and Promotional Labeling Branch.
Biological Drug and Device Compliance Branch.
Division of Manufacturing and Product Quality.
Product Release Branch.
Manufacturing Review Branch I.
Manufacturing Review Branch II.
Applications Review Branch.
Division of Inspections and Surveillance.
Program Surveillance Branch.
Bioresearch Monitoring Branch.
Division of Biological Standards and Quality Control.
Laboratory of Analytical Chemistry and Blood Related Products.
Quality Assurance Branch.
Laboratory of Microbiology, In-vivo Testing and Standards.
Office of Blood Research and Review.
Administrative Staff.
Policy and Publication Staff.
Regulatory Project Management Staff.
Division of Emerging and Transfusion Transmitted Diseases.
Laboratory of Molecular Virology.
Laboratory of Emerging Pathogens.
Laboratory of Bacterial and Transmissible Spongiform Encephalopathy Agents.
Product Review Branch.
Division of Hematology Clinical Review.
Hematology Product Review Branch.
Clinical Review Branch.
Division of Blood Components and Devices.
Blood and Plasma Branch.
Devices and Review Branch.
Division of Hematology Research and Review.
Laboratory of Cellular Hematology.
Laboratory of Hemostasis.
Laboratory of Plasma Derivatives.
Laboratory of Biochemistry and Vascular Biology.
Office of Vaccine Research and Review.
Program Operations Staff.
Division of Bacterial, Parasitic, and Allergenic Products.
Laboratory of Immunobiochemistry.
Laboratory of Respiratory and Special Pathogens.
Laboratory of Bacterial Polysaccharides.
Laboratory of Mucosal Pathogens and Cellular Immunology.
Division of Viral Products.
Laboratory of Pediatric and Respiratory Viral Diseases.
Laboratory of Hepatitis Viruses.
Laboratory of Retroviruses.
Laboratory of DNA Viruses.
Laboratory of Vector-Borne Diseases.
Laboratory of Method Development.
Laboratory of Immunoregulation.
Division of Vaccines and Related Products Applications.
Clinical Review Branch 1.
Clinical Review Branch 2.
CMC Review Branch 1.
CMC Review Branch 2.
CMC Review Branch 3.
Review Management Support Branch.
Office of Communication, Outreach, and Development.
Division of Disclosure and Oversight Management.
Congressional and Oversight Branch.
Access Litigation and Freedom of Information Branch.
Division of Manufacturers Assistance and Training.
Career Development and Directed Training Branch.
Manufacturers Assistance and Technical Training Branch.
Division of Communication and Consumer Affairs.
Communication Technology Branch.
Consumer Affairs Branch.
Office of Biostatistics and Epidemiology.
Division of Biostatistics.
Vaccine Evaluation Branch.
Therapeutics Evaluation Branch.
Division of Epidemiology.
Pharmacovigilance Branch.
Analytic Epidemiology Branch.
Office of Cellular, Tissue and Gene Therapies.
Regulatory Management Staff.
Division of Cellular and Gene Therapies.
Cell Therapies Branch.
Gene Therapies Branch.
Gene Transfer and Immunogencity Branch.
Tumor Vaccine and Biotechnology Branch.
Cellular and Tissue Therapy Branch.
Division of Clinical Evaluation and Pharmacological Toxicology Review.
General Medicine Branch.
Pharmacology/Toxicology Branch.
Oncology Branch.
Division of Human Tissues.
Human Tissue and Reproduction Branch.
Center for Tobacco Products.[10]
Office of the Center Director.
Office of Management.
Acquisitions and Assistance Staff.
Information and Technology Staff.
Management and Logistics Staff.
Division of Financial Management.
Division of Human Capital.
Office of Regulations.
Office of Science.
Regulatory Science and Management Staff.
Research Staff.
Division of Regulatory Project Management.
Regulatory Project Management Branch I.
Regulatory Project Management Branch II.
Regulatory Project Management Branch III.
Regulatory Project Management Branch IV.
Division of Regulatory Science Informatics.
Division of Product Science.
Division of Individual Health Science.
Division of Population Health Science.
Division of Non-Clinical Science.
Office of Health Communication and Education.
Division of Public Health Education.
Division of Health, Scientific, and Regulatory Communication.
Office of Compliance and Enforcement.
Division of Enforcement and Manufacturing.
Division of Promotion, Advertising and Labeling.
Division of State Programs.
Division of Business Operations.
Center for Drug Evaluation and Research.[11]
Office of the Center Director.
Controlled Substance Staff.
Professional Affairs and Stakeholder Engagement Staff.
Counter-Terrorism and Emergency

[10] Mailing address: 10903 New Hampshire Ave., Bldg. 75, Silver Spring, MD 20993.
[11] Mailing address: 10903 New Hampshire Ave., Bldg. 51, Silver Spring, MD 20993.

Coordination Staff.
Drug Shortages Staff.
Office of Regulatory Policy.
Division of Regulatory Policy I.
Division of Regulatory Policy II.
Division of Regulatory Policy III.
Division of Information Disclosure Policy.
Proactive Disclosure Branch.
Freedom of Information Branch.
Office of Management.
Strategic Programs and Initiatives Staff.
Ethics Liaison Staff.
Division of Budget Execution and Resource Management.
Budget Execution Branch.
Acquisitions Support Branch.
Financial Accountability Branch.
Division of Management Services.
Human Capital Management Branch.
Human Capital Programs Branch.
Facilities Operations Branch.
Property and Travel Services Branch.
Leave and Performance Management Branch.
Division of User Fee Management and Budget Formulation.
Generics Branch.
Policy and Operations Branch.
Brands Branch.
Office of Communications.
Division of Online Communications.
Division of Health Communications.
Division of Drug Information.
Office of Compliance.
Program Management and Analysis Staff.
Office of Manufacturing Quality.
Manufacturing Guidance and Policy Staff.
Division of Drug Quality I.
Global Compliance Branch I.
Global Compliance Branch II.
Division of Drug Quality II.
Global Compliance Branch III.
Global Compliance Branch IV.
Office of Unapproved Drugs and Labeling Compliance.
Division of Prescription Drugs.
Prescription Drugs Branch.
Compounding and Pharmacy Practices Branch.
Division of Non-Prescription Drugs and Health Fraud.
Over-the-Counter Drugs Branch.
Health Fraud Branch.
Office of Scientific Investigations.
Policy Staff.
Division of Enforcement and Postmarket Safety.
Compliance Enforcement Branch.
Postmarketing Safety Branch.
Division of Clinical Compliance Evaluation.
Good Clinical Practice Compliance Oversight Branch.
Good Clinical Practice Assessment Branch.
Office of Drug Security, Integrity and Response.
Division of Import Exports and Recalls.
Recalls and Shortages Branch.
Import Export Compliance Branch.
Division of Supply Chain Integrity.
Supply Chain Strategy and Policy Branch.
Supply Chain Response and Enforcement Branch.
Office of Program and Regulatory Operations.
Project Management and Coordination Staff I.
Project Management and Coordination Staff II.
Drug Registration and Listing Staff.
Office of Medical Policy.
Office of Prescription Drug Promotion.
Division of Consumer Drug Promotion.
Division of Professional Drug Promotion.
Office of Medical Policy Initiatives.
Division of Medical Policy Development.
Division of Medical Policy Programs.
Division of Clinical Trial Quality.
Office of Translational Science.
Program Management and Analysis Staff.
Office of Biostatistics.
Division of Biometrics I.
Division of Biometrics II.
Division of Biometrics III.
Division of Biometrics IV.
Division of Biometrics V.
Division of Biometrics VI.
Division of Biometrics VII.
Division of Biometrics VIII.
Office of Clinical Pharmacology.
Division of Clinical Pharmacology I.
Division of Clinical Pharmacology II.
Division of Clinical Pharmacology III.
Division of Clinical Pharmacology IV.
Division of Clinical Pharmacology V.
Division of Pharmacometrics.
Division of Applied Regulatory Science.
Office of Computational Science.
Office of Study Integrity and Surveillance.
Division of New Drug Bioequivalence Evaluation.
Division of Generic Drug Bioequivalence Evaluation.
Office of Executive Programs.
Division of Learning and Organizational Development.
Scientific and Regulatory Education Branch.
Training Design and Delivery Branch.
Leadership and Organizational Development Branch.
Division of Executive Operations.
Division of Advisory Committee and Consultant Management.
Office of Surveillance and Epidemiology.
Regulatory Science Staff.
Regulatory Affairs Staff.
Program Management and Analysis Staff.
Project Management Staff.
Office of Medication Error Prevention and Risk Management.
Division of Medication Error Prevention and Analysis.
Division of Risk Management.
Office of Pharmacovigilance and Epidemiology.
Division of Epidemiology I.
Division of Epidemiology II.
Division of Pharmacovigilance I.
Division of Pharmacovigilance II.
Office of New Drugs.
Program Management and Analysis Staff.
Pharmacology/Toxicology Staff.
Regulatory Affairs Staff.
Office of Drug Evaluation I.
Division of Cardiovascular and Renal Products.
Division of Neurology Products.
Division of Psychiatry Products.
Office of Drug Evaluation II.
Division of Metabolism and Endocrinology Products.
Division of Pulmonary, Allergy, and Rheumatology Products.
Division of Anesthesia, Analgesia, and Addiction Products.
Office of Drug Evaluation III.
Division of Gastroenterology and Inborn Effects Products.
Division of Bone, Reproductive and Urologic Products.
Division of Dermatology and Dental Products.
Office of Antimicrobial Products.
Division of Anti-Infective Products.
Division of Anti-Viral Products.
Division of Transplant and Ophthalmology Products.
Office of Drug Evaluation IV.
Division of Nonprescription Drug Products.
Division of Medical Imaging Products.
Division of Pediatrics and Maternal Health.
Office of Hematology and Oncology Drug Products.
Division of Oncology Products I.
Division of Oncology Products II.
Division of Hematology Products.
Division of Hematology Oncology Toxicology.
Office of Strategic Programs.
Office of Program and Strategic Analysis.
Program Evaluation and Implementation Staff.
Economics Staff.
Performance Analysis and Data Services Staff.
Lean Management Staff.
Office of Business Informatics.
Division of Regulatory Review and

Drug Safety Services and Solutions.
Division of Business Management Services and Solutions.
Division of Data Management Services and Solutions.
Division of Drug Quality and Compliance Services and Solutions.
Office of Generic Drugs.
Clinical Safety Surveillance Staff.
Program Management and Analysis Staff.
Communications Staff.
Office of Research and Standards.
Division of Therapeutic Performance.
Division of Quantitative Methods and Modeling.
Office of Bioequivalence.
Division of Bioequivalence I.
Division of Bioequivalence II.
Division of Bioequivalence III.
Division of Clinical Review.
Office of Generic Drug Policy.
Division of Legal and Regulatory Support.
Division of Policy Development.
Office of Regulatory Operations.
Division of Labeling Review.
Division of Filing Review.
Division of Project Management.
Division of Quality Management Systems.
Office of Pharmaceutical Quality.
Scientific Staff.
Program Management and Analysis Staff.
Office of Biotechnology Products.
Division of Biotechnology Review and Research I.
Division of Biotechnology Review and Research II.
Division of Biotechnology Review and Research III.
Division of Biotechnology Review and Research IV.
Office of New Drug Products.
Division of Life Cycle API.
Life Cycle Branch I.
Life Cycle Branch II.
Life Cycle Branch III.
Division of New Drug API.
New Drug Branch I.
New Drug Branch II.
Division of New Drug Products I.
New Drug Products Branch I.
New Drug Products Branch II.
New Drug Products Branch III.
Division of New Drug Products II.
New Drug Products Branch IV.
New Drug Products Branch V.
New Drug Products Branch VI.
Division of Biopharmaceutics.
Biopharmaceutics Branch I.
Biopharmaceutics Branch II.
Biopharmaceutics Branch III.
Office of Policy for Pharmaceutical Quality.
Division of Regulations, Guidance and Standards.
Policy Development and Evaluation Branch I.
Policy Development and Evaluation Branch II.
Compendial Operations and Standards Branch.
Division of Internal Policies and Programs.
Policy Development and Evaluation Branch I.
Policy Development and Evaluation Branch II.
Office of Process and Facilities.
Division of Process Assessment I.
Process Assessment Branch I.
Process Assessment Branch II.
Process Assessment Branch III.
Division of Process Assessment II.
Process Assessment Branch IV.
Process Assessment Branch V.
Process Assessment Branch VI.
Division of Process Assessment III.
Process Assessment Branch VII.
Process Assessment Branch VIII.
Process Assessment Branch IX.
Division of Microbiology Assessment.
Microbiology Assessment Branch I.
Microbiology Assessment Branch II.
Microbiology Assessment Branch III.
Microbiology Assessment Branch IV.
Division of Inspectional Assessment.
Inspectional Assessment Branch I.
Inspectional Assessment Branch II.
Inspectional Assessment Branch III.
Office of Surveillance.
Division of Quality Intelligence, Risk Analysis, and Modeling.
Data Integrity Branch.
Quality Intelligence Branch.
Analysis and Modeling Branch.
Division of Quality Surveillance Assessment.
Quality Deviation and Assessment Branch.
Inspection Assessment Branch.
Office of Testing and Research.
Division of Product Quality Research.
Product Quality Branch I.
Product Quality Branch II.
Division of Pharmaceutical Analysis.
Pharmaceutical Analysis Branch I.
Pharmaceutical Analysis Branch II.
Office of Program and Regulatory Operations.
Division of Regulatory and Business Process Management I.
Regulatory and Business Process Management Branch I.
Regulatory and Business Process Management Branch II.
Division of Regulatory and Business Process Management II.
Regulatory and Business Process Management Branch III.
Regulatory and Business Process Management Branch IV.
Division of Operational Excellence, Learning, and Professional Development.
Learning and Professional Development Branch.
Organizational Excellence Branch.
Office of Lifecycle Drug Products.
Division of Immediate Release Products I.
Immediate Release Branch I.
Immediate Release Branch II.
Immediate Release Branch III.
Division of Immediate Release Products II.
Immediate Release Branch IV.
Immediate Release Branch V.
Immediate Release Branch VI.
Division of Modified Release Products.
Modified Release Branch I.
Modified Release Branch II.
Modified Release Branch III.
Division of Liquid-Based Products.
Liquid-Based Branch I.
Liquid-Based Branch II.
Liquid-Based Branch III.
Division of Post-Marketing Activities I.
Post-Marketing Branch I.
Post-Marketing Branch II.
Division of Post-Marketing Activities II.
Post-Marketing Branch III.
Post-Marketing Branch IV.
Post-Marketing Branch V.
Center for Devices and Radiological Health. [12]
Office of the Center Director.
Regulations Staff.
Office of Management Operations.
Division of Ethics and Management Operations.
Human Resources and Administrative Management Branch.
Integrity, Conference and Committee Management Branch.
Division of Planning, Analysis and Finance and Property.
Planning Branch.
Financial Management Branch.
Office of Compliance.
Program Management Staff.
Division of Bioresearch Monitoring.
Bioresearch Compliance Branch I.
Bioresearch Compliance Branch II.
Division of Analysis and Program Operations.
Quality Management System and Executive Secretary Staff.
Field Inspections Support Branch.
Recall Branch.
Registration and Risk Branch.
Allegations of Regulatory Misconduct Branch.
Division of Manufacturing and Quality.
Physical Medicine, Orthopedic, Neurology, and Dental Devices Branch.
Cardiovascular Devices Branch.

[12] Mailing address: 10903 New Hampshire Ave., Bldg. 66, Silver Spring, MD 20993.

Abdominal and Surgical Devices Branch.
Respiratory, Ear/Nose/Throat, General Hospital, and Ophthalmic Devices Branch.
Division of Premarket and Labeling Compliance.
Surveillance and Enforcement Branch I.
Surveillance and Enforcement Branch II
Division of International Compliance Operations.
Foreign Enforcement Branch.
Imports Branch.
Exports Branch.
Office of Device Evaluation.
Program Management Staff.
Program Operations Staff.
Pre-Market Approval Staff.
Investigational Device Exemption Staff.
Pre-Market Notification Section.
Division of Cardiovascular Devices.
Circulatory Support Devices Branch.
Cardiac Diagnostics Devices Branch.
Implantable Electrophysiology Devices Branch.
Vascular Surgery Devices Branch.
Structural Heart Devices Branch.
Interventional Cardiology Devices Branch.
Cardiac Electrophysiology Devices Branch.
Peripheral Interventional Devices Branch.
Division of Reproductive, Gastro-Renal, and Urological Devices.
Obstetrics/Gynecology Devices Branch.
Urology and Lithotripsy Devices Branch.
Renal Devices Branch.
Gastroenterology Devices Branch.
Division of Orthopedic Devices.
Restorative and Repair Devices Branch.
Joint and Fixation Branch I.
Joint and Fixation Branch II.
Anterior Spine Devices Branch.
Posterior Spine Devices Branch.
Division of Ophthalmic and Ear, Nose, and Throat Devices.
Intraocular and Corneal Implant Devices Branch.
Diagnostic and Surgical Devices Branch.
Contact Lenses and Retinal Devices Branch.
Ear, Nose and Throat Devices Branch.
Division of Anesthesiology, General Hospital, Respiratory Infection Control, and Dental Devices.
General Hospital Devices Branch.
Infection Control Devices Branch.
Dental Devices Branch.
Anesthesiology Devices Branch.
Respiratory Devices Branch.
Division of Neurological and Physical Medicine Devices.
Neurostimulation Devices Branch.
Neurodiagnostic and Neurosurgical Devices Branch.
Physical Medicine Devices Branch.
Division of Surgical Devices.
General Surgery Devices Branch I.
General Surgery Devices Branch II.
Plastic and Reconstructive Surgery Devices Branch I.
Plastic and Reconstructive Surgery Devices Branch II.
Office of Science and Engineering Laboratories.
Division of Biology, Chemistry, and Materials Science.
Division of Biomedical Physics.
Division of Imaging, Diagnostics, and Software Reliability.
Division of Applied Mechanics.
Division of Administrative and Laboratory Support.
Office of Communication and Education.
Program Management Operations Staff.
Digital Communication Media Staff.
Division of Health Communication.
Web Communication Branch.
Strategic Communication Branch.
Division of Industry and Consumer Education.
Postmarket and Consumer Branch.
Premarket Programs Branch.
Division of Information Disclosure.
Freedom of Information Branch A.
Freedom of Information Branch B.
Division of Employee Training and Development.
Employee Development Branch.
Technology and Learning Management Branch.
Office of Surveillance and Biometrics.
Program Management Staff.
Informatics Staff.
Signal Management Staff.
Division of Biostatistics.
Therapeutic Statistics Branch I.
Therapeutic Statistics Branch II.
Therapeutic Statistics Branch III.
Diagnostic Statistics Branch I.
Diagnostic Statistics Branch II.
Division of Postmarket Surveillance.
Product Evaluation Branch I.
Product Evaluation Branch II.
Product Evaluation Branch III.
Information Analysis Branch.
MDR Policy Branch.
Division of Patient Safety Partnership.
Clinical Outreach Branch I.
Clinical Outreach Branch II.
Division of Epidemiology.
Epidemiologic Evaluation and Research Branch I.
Epidemiologic Evaluation and Research Branch II.
Epidemiologic Evaluation and Research Branch III.
Office of In Vitro Diagnostics and Radiological Health.
Division of Chemistry and Toxicology Devices.
Chemistry Branch.
Diabetes Branch.
Toxicology Branch.
Cardio-Renal Diagnostics Branch.
Division of Immunology and Hematology Devices.
Hematology Branch.
Immunology and Flow Cytometry Branch.
Division of Microbiology Devices.
Viral Respiratory and HPV Branch.
General Viral and Hepatitis Branch.
General Bacterial and Antimicrobial Susceptibility Branch.
Bacterial Respiratory and Medical Countermeasures Branch.
Division of Radiological Health.
Magnetic Resonance and Electronic Products Branch.
Diagnostic X-Ray Systems Branch.
Nuclear Medicine and Radiation Therapy Branch.
Mammography, Ultrasound and Imaging Software Branch.
Division of Mammography Quality Standards.
Program Management Branch.
Information Management Branch.
Division of Program Operations and Management.
Division of Molecular Genetics and Pathology.
Molecular Pathology and Cytology Branch.
Molecular Genetics Branch.
Office of Global Regulatory Operations and Policy. [13]
Office of International Programs.[14]
Office of Regulatory Affairs.[15]
Office of the Associate Commissioner for Regulatory Affairs.
Executive Secretariat Staff.
Information Technology Staff.
Office of Resource Management.[16]
Division of Planning Evaluation and Management.
Program Planning and Workforce Management Branch.
Program Evaluation Branch.
Division of Budget Formulation and Execution.
Division of Human Resources Development.
Division of Management Operations.
Office of Criminal Investigations.[17]
Mid-Atlantic Area Office.
Philadelphia Resident Unit.

[13] Mailing address: 10903 New Hampshire Ave., Bldg. 1, Silver Spring, MD 20993.
[14] Mailing address: 12420 Parklawn Dr., Element Building, Rockville, MD 20857.
[15] Mailing address: 10903 New Hampshire Ave., Bldg. 31, Silver Spring, MD 20993.
[16] Mailing address: 12420 Parklawn Dr., Element Building, Rockville, MD 20857.
[17] Mailing address: 7500 Standish Pl., MPN2 Building, Rockville, MD 20855.

Midwest Area Office.
Northeast Area Office.
Boston, MA Resident Unit.
Pacific Area Office.
San Francisco, CA Resident Unit.
Southeast Area Office.
San Juan, PR Resident Unit.
Atlanta, GA Resident Unit.
New Orleans, LA Resident Unit.
Southwest Area Office.
Dallas, TX Resident Unit.
Office of Communications and Quality Program Management.
Quality Management Systems Staff.
Project Coordination Staff.
Division of Communications.
Public Affairs and Editorial Services Branch.
Web and Digital Media Strategies Branch.
Office of Partnerships.[18]
Standards Implementation Staff.
Contracts and Grants Staff.
Office of Policy and Risk Management.[19]
Food and Feed Policy Staff.
Medical Products and Tobacco Policy Staff.
Risk Management Staff.
Division of Planning Evaluation and Management.
Program Evaluation Branch.
Work Planning Branch.
Office of Operations.[20]
Audit Staff.
Office of Enforcement and Import Operations.[21]
Division of Enforcement.
Division of Compliance Systems.
Enforcement Systems Branch.
Import Compliance Systems Branch.
Division of Import Operations.
Import Operations and Maintenance Branch.
Import Program Development and Implementation Branch.
Office of Regulatory Science.[22]
Food and Feed Scientific Staff.
Medical Products and Tobacco Scientific Staff.
Laboratory Operations and Support Staff.
Office of Food and Feed Operations.[23]
Division of Food Defense Targeting.
Division of Food and Feed Program Operations and Inspections.
Food and Feed Program Operations Branch.
Food and Feed Inspection Branch.
Food and Feed Trip Planning Branch.
Office of Medical Products and Tobacco Operations.[24]
Division of Products and Tobacco Program Operations.
Medical Device and Tobacco Program Operations Branch.
Team Biological Branch.
Division of Medical Products and Tobacco Inspections.
Medical Products and Tobacco Inspection Branch.
Drug Inspection Branch.
Medical Products and Tobacco Trip Planning Branch.
Regional Field Office, Northeast Region, Jamaica, NY.[25]
Operations Staff.
Intergovernmental Affairs Staff.
District Office New York.[26]
Domestic Compliance Branch.
Domestic Investigations Branch.
Resident Post Long Island, NY.
Resident Post White Plains, NY.
Resident Post Albany, NY.
Resident Post Binghamton, NY.
Resident Post Rochester, NY.
Resident Post Newburgh, NY.
Resident Post Syracuse, NY.
Import Operations Branch (Downstate).
Resident Post Port Elizabeth, NJ.
Import Operations Branch (Upstate).
Resident Post Champlain, NY.
Resident Post Alexandra Bay, NY.
Resident Post Massena, NY.
Resident Post Ogdensburg, NY.
Northeast Regional Laboratory.[27]
Microbiological Science Branch.
Chemistry Branch 1.
Chemistry Branch 2.
New England District Office.[28]
Compliance Branch.
Investigations Branch.
Resident Post Augusta, ME.
Resident Post Bridgeport, CT.
Resident Post Concord, NH.
Resident Post Hartford, CT.
Resident Post Providence, RI.
Resident Post Worcester, MA.
Resident Post Calais, ME.
Resident Post Houlton, ME.
Resident Post Highgate, VT.
Winchester Engineering and Analytical Center.[29]
Analytical Branch.
Engineering Branch.
Regional Field Office, Southwest Region, Dallas, TX.[30]
State Cooperative Programs Staff.
Resident Post Pharr.
Dallas District Office.[31]
Compliance Branch.
Investigations Branch.
Resident Post Austin, TX.
Resident Post Fort Worth, TX.
Resident Post Houston, TX.
Resident Post San Antonio, TX.
Resident Post Oklahoma City, OK.
Resident Post Little Rock, AR.
Kansas City District Office.[32]
Investigations Branch.
Resident Post Wichita, KS.
Resident Post Omaha, NE.
Resident Post Des Moines, IA.
Resident Post Springfield, MO.
Resident Post St Louis, MO.
Resident Post Davenport, IA.
Compliance Branch.
Denver District Office.[33]
Compliance Branch.
Investigations Branch.
Resident Post Salt Lake City, UT.
Resident Post Albuquerque, NM.
Arkansas Regional Laboratory.[34]
General Chemistry Branch.
Pesticide Chemistry Branch.
Microbiology Branch.
Southwest Import District Office Dallas, TX.[35]
Compliance Branch.
Investigations Branch.
Resident Post Calexico.
Resident Post Eagle Pass.
Resident Post El Paso Bota.
Resident Post El Paso Bota Westmoreland.
Resident Post El Paso Ysleta Bridge.
Resident Post Houston (SWID).
Resident Post Laredo #2 Bridge.
Resident Post Laredo Columbia Bridge.
Resident Post Laredo World Trade Bridge.
Resident Post Los Tomates.
Resident Post Nogales #1.
Resident Post Nogales #2.
Resident Post Otay Mesa #1.
Resident Post Otay Mesa #2.
Resident Post Pharr.
Resident Post Rio Grande City.
Resident Post San Luis.
Kansas City Laboratory.[36]

[18] Mailing address: 12420 Parklawn Dr., Element Building, Rockville, MD 20857.
[19] Mailing address: 12420 Parklawn Dr., Element Building, Rockville, MD 20857.
[20] Mailing address: 10903 New Hampshire Ave., Bldg. 31, Silver Spring, MD 20993.
[21] Mailing address: 12420 Parklawn Dr., Element Building, Rockville, MD 20857.
[22] Mailing address: 12420 Parklawn Dr., Element Building, Rockville, MD 20857.
[23] Mailing address: 12420 Parklawn Dr., Element Building, Rockville, MD 20857.
[24] Mailing address: 12420 Parklawn Dr., Element Building, Rockville, MD 20857.
[25] Mailing address: 158–15 Liberty Ave., Jamaica, NY 11433.
[26] Mailing address: 158–15 Liberty Ave., Jamaica, NY 11433.
[27] Mailing address: 158–15 Liberty Ave., Jamaica, NY 11433.
[28] Mailing address: 1 Montvale Ave., 4th Floor, Stoneham, MA 02180–3500.
[29] Mailing address: 109 Holton St., Winchester, MA 01890.
[30] Mailing address: 4040 North Central Expressway, Dallas, TX 75204–3128.
[31] Mailing address: 4040 North Central Expressway, Suite 300, Dallas, TX 75204–3128.
[32] Mailing address: 8050 Marshal Dr., Suite 250, Lenexa, KS 66214.
[33] Mailing address: Sixth Avenue and Kipling Street, Building 20, P.O. Box 25087, Denver, CO 80255–0087—Denver Federal Center.
[34] Mailing address: 3900 NCTR Rd., Bldg. 26, Jefferson, AR 72079.
[35] Mailing address: 4040 North Central Expressway, Suite 300, Dallas, TX 75204–3128.
[36] Mailing address: 11510 West 80th St., Lenexa, KS 66214.

Denver Laboratory.[37]
Central Regional Field Office Chicago IL.[38]
State Cooperative Programs Staff I.
State Cooperative Programs Staff II.
Regional Operations Staff.
Baltimore District Office Baltimore, MD.[39]
Compliance Branch.
Investigations Branch.
Resident Post Charleston, WV.
Resident Post Falls Church, VA.
Resident Post Seva.
Resident Post Richmond, VA.
Resident Post Roanoke, VA.
Resident Post Dundalk Marine Terminal, MD.
Resident Post Morgantown, WV.
District Office Cincinnati, OH.[40]
Compliance Branch.
Investigations Branch.
Resident Post Brunswick, OH.
Resident Post Columbus, OH.
Resident Post Toledo, OH.
Resident Post Louisville, KY.
Forensic Chemistry Center.[41]
Inorganic Chemistry Branch.
Organic Chemistry Branch.
District Office Parsippany, NJ.[42]
Compliance Branch.
Investigations Branch.
Resident Post Voorhees, NJ.
Resident Post North Brunswick, NJ.
District Office Philadelphia, PA.[43]
Compliance Branch.
Investigations Branch.
Resident Post Harrisburg, PA.
Resident Post Pittsburgh, PA.
Resident Post Wilkes-Barre, PA.
Resident Post Wilmington, PA.
District Office Chicago, IL.[44]
Compliance Branch.
Investigations Branch.
Resident Post Peoria, IL.
Resident Post Hinsdale, IL.
Resident Post Gurnee, IL.
Resident Post Springfield, IL.
Resident Post O'Hare Airport.
District Office Minneapolis, MN.[45]
Compliance Branch.
Investigations Branch.
Resident Post La Crosse, WI.
Resident Post Green Bay, WI.
Resident Post Milwaukee, WI.
Resident Post Madison, WI.
Resident Post Fargo, ND.
Resident Post Stevens Point, WI.
Resident Post Sioux, SD.
District Office Detroit, MI.[46]
Compliance Branch.
Investigations Branch.
Resident Post Kalamazoo, MI.
Resident Post South Bend, IN.
Resident Post Indianapolis, IN.
Resident Post Evansville, IN.
Resident Post
Philadelphia Laboratory.[47]
Detroit Laboratory.[48]
Southeast Regional Field Office Atlanta, GA.[49]
State Cooperative Programs Staff
Atlanta District Office.[50]
Compliance Branch.
Investigations Branch.
Resident Post Savannah, GA.
Resident Post Tifton, GA.
Resident Post Charlotte, NC.
Resident Post Greensboro, NC.
Resident Post Greenville, NC.
Resident Post Raleigh, NC.
Resident Post Charleston, SC.
Resident Post Columbia, SC.
Resident Post Greenville, SC.
Resident Post Asheville, NC.
Florida District Office.[51]
Compliance Branch.
Investigations Branch.
Resident Post Jacksonville, FL.
Resident Post Miami, FL.
Resident Post Tallahassee, FL.
Resident Post Tampa, FL.
Resident Post Boca Raton, FL.
Resident Post Ft. Meyers, FL.
Resident Post Port Everglades, FL.
New Orleans, LA, District Office.[52]
Compliance Branch.
Investigations Branch.
Resident Post Baton Rouge, LA.
Resident Post Lafayette, LA.
Resident Post Covington, LA.
Resident Post Jackson, MS.
Resident Post Mobile, AL.
Nashville Branch.
Resident Post Knoxville, TN.
Resident Post Memphis, TN.
Resident Post Birmingham, AL.
Resident Post Montgomery, AL.
San Juan District Office.[53]
Compliance Branch.
Investigations Branch.
Resident Post Aquada, PR.
Resident Post Ponce, PR.
Southeast Regional Laboratory Atlanta, GA.[54]
Chemistry Branch I.
Microbiology Branch.
Atlanta Center for Nutrient Analysis.
Chemistry Branch II.
San Juan Laboratory.[55]
Regional Field Office, Pacific Region, Oakland, CA.[56]
State Cooperative Programs Staff.
District Office San Francisco, CA.[57]
Compliance Branch.
Investigations Branch.
Resident Post Las Vegas, NV.
Resident Post Fresno, CA.
Resident Post Sacramento, CA.
Resident Post Honolulu, HI.
Resident Post San Jose, CA.
Resident Post Stockton, CA.
Resident Post South San Francisco.
District Office Los Angeles, CA.[58]
Compliance Branch.
Import Operations Branch.
Resident Post Los Angeles Airport.
Resident Post Ontario, CA—Import.
Domestic Investigations Branch.
Resident Post Woodland Hills, CA.
Resident Post San Diego, CA.
Resident Post Tempe, AZ.
Resident Post Ontario, CA—Domestic.
District Office Seattle, WA.[59]
Compliance Branch.
Investigations Branch.
Resident Post Anchorage, AK.
Resident Post Boise, ID.
Resident Post Portland, ID.
Resident Post Spokane, WA.
Resident Post Oroville, WA.
Resident Post Portland, OR—Airport.
Resident Post Blaine, WA.
Resident Post Helena, MT.
Resident Post Sweetgrass, MT.
Resident Post Tacoma, WA.
Resident Post Puget Sound, WA.
Pacific Regional Laboratory Southwest.[60]
Food Chemistry Branch.
Drug Chemistry Branch.
Microbiology Branch.

[37] Mailing address: Sixth Avenue and Kipling Street, Building 20, Denver, CO 80255–0087—Denver Federal Center.

[38] Mailing address: 20 N. Michigan Ave., Suite 510, Chicago, IL 60602.

[39] Mailing address: 6000 Metro Dr., Suite 101, Baltimore, MD 21215.

[40] Mailing address: 6751 Steger Dr., Cincinnati, OH 45237.

[41] Mailing address: 6751 Steger Dr., Cincinnati, OH 45237.

[42] Mailing address: 10 Waterview Blvd., 3rd Floor, Parsippany, NJ 07054—Waterview Corporate Center.

[43] Mailing address: 200 Chestnut St., Room 900, Philadelphia, PA 19106—U.S. Customs House.

[44] Mailing address: 550 West Jackson Blvd., Suite 1500, Chicago, IL 60661.

[45] Mailing address: 250 Marquette Ave., Suite 600, Minneapolis, MN 55401.

[46] Mailing address: 300 River Pl., Suite 5900, Detroit, MI 48207.

[47] Mailing address: 200 Chestnut St., Room 900, Philadelphia, PA 19106—U.S. Customs House.

[48] Mailing address: 300 River Pl., Suite 5900, Detroit, MI 48207.

[49] Mailing address: 60 Eighth St. NE., Atlanta, GA 30309.

[50] Mailing address: 60 Eighth St. NE., Atlanta, GA 30309.

[51] Mailing address: 555 Winderley Pl., Suite 200, Maitland, FL 32751.

[52] Mailing address: 404 BNA Dr., Building 200, Suite 500, Nashville, TN 37217.

[53] Mailing address: 466 Fernandez Juncos Ave., San Juan, PR 00901.

[54] Mailing address: 60 Eighth St., Atlanta, GA 30309.

[55] Mailing address: 466 Fernandez Juncos Ave., San Juan, PR 00901.

[56] Mailing address: 1301 Clay St., Room 1180N, Oakland, CA 94612.

[57] Mailing address: 1431 Harbor Bay Pkwy., Alameda, CA 94502.

[58] Mailing address: 19701 Fairchild Rd., Irvine, CA 92612.

[59] Mailing address: 22215 26th Ave. SE., Suite 210, Bothell, WA 98021.

[60] Mailing address: 19701 Fairchild Rd., Irvine, CA 92612.

Pacific Regional Laboratory Northwest.[61]
Chemistry Branch.
Microbiology Branch.
Seafood Products Research Center.
Office of Operations.
Office of Business Services.
Business Operations Staff.
Employee Resource and Information Center.
Division of Ethics and Integrity.
Office of Equal Employment Opportunity.
Compliance Staff.
Office of Finance, Budget, and Acquisitions.
Office of Budget.
Division of Budget Formulation.
Division of Budget Execution and Control.
Office of Acquisition and Grant Services.
Division of Acquisition Operations.
Division of Acquisition Programs.
Division of Acquisition Support and Grants.
Division of Information Technology.
Office of Financial Operations.
Office of Financial Management.
Office of Financial Services.
Office of Human Resources.
Commission Corps Affairs Staff.
Management Analysis Services Staff.
Business Operations Staff.
Division of Workforce Relations.
Division of Policy, Programs, and Executive Resources.
Division of Human Resource Services for Office of the Commissioner/Office of Operations.
Division of Human Resource Services for Office of Foods and Veterinary Medicine/Office of Global Operations and Policy.
Division of Human Resource Services for Office of Medical Products and Tobacco.
FDA University.
Office of Facilities, Engineering and Mission Support Services.
Jefferson Laboratories Complex Staff.
Division of Operations Management and Community Relations.
Division of Planning, Engineering and Safety Management.
Office of Information Management and Technology.
Office of Information Management.
Office of Technology and Delivery.
Division of Infrastructure Operations.
Division of Application Services.
Division of Delivery Management and Support.
Office of Business and Customer Assurance.
Division of Business Partnership and Support.
Division of Management Services.
Office of Enterprise and Portfolio Management.
Office of Safety, Security, and Crisis Management.
Office of Security Operations.
Office of Crisis Management.
Office of Emergency Operations.
Office of Policy, Planning, Legislation, and Analysis.[62]
Management and Operations Staff.
Intergovernment Affairs Staff.
Office of Policy.
Regulations Policy and Management Staff.
Policy Development and Coordination Staff.
Office of Planning.
Planning Staff.
Program Evaluation and Process Improvement Staff.
Economics Staff.
Risk Communication Staff.
Office of Legislation.
Office of Public Health Strategy and Analysis.

Dated: November 1, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–26799 Filed 11–4–16; 8:45 am]

BILLING CODE 4164–01–P

[61] Mailing address: 22201 23rd Dr. SE., Bothell, WA 98021–4421.

[62] Mailing address: 10903 New Hampshire Ave., Silver Spring, MD 20993.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2016–0922]

Special Local Regulation; San Diego Fall Classic; Mission Bay, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement regulation.

SUMMARY: The Coast Guard will enforce the special local regulation on the waters of Mission Bay, California during the San Diego Fall Classic boat racing event from 6:00 a.m. to 12:00 p.m. on November 13, 2016. These special local regulations are necessary to provide for the safety of the participants, crew, spectators, sponsor vessels, and general users of the waterway. During the enforcement period, persons and vessels are prohibited from anchoring, blocking, loitering, or impeding within this regulated area unless authorized by the Captain of the Port, or his designated representative.

DATES: The regulations in 33 CFR 100.1101 will be enforced from 6 a.m. through 12 p.m. on November 13, 2016 for Item 1 in Table 1 of § 100.1101.

FOR FURTHER INFORMATION CONTACT: If you have questions about this publication of enforcement, call or email Lieutenant Robert Cole, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone (619) 278–7656, email *D11MarineEventsSD@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulation in 33 CFR 100.1101 for the San Diego Fall Classic in Mission Bay, CA in 33 CFR 100.1101, Table 1, Item 1 of that section from 6 a.m. until 12 p.m. on November 13, 2016. This enforcement action is being taken to provide for the safety of life on navigable waterways during the races. The Coast Guard's regulation for recurring marine events in the San Diego Captain of the Port Zone identifies the regulated entities for this event. Under the provisions of 33 CFR 100.1101, persons and vessels are prohibited from anchoring, blocking, loitering, or impeding within this regulated area of Mission Bay, to include South Pacific Passage, Fiesta Bay and the waters surrounding Vacation Isle, unless authorized by the Captain of the Port, or his designated representative. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This document is issued under authority of 5 U.S.C. 552(a) and 33 CFR 100.1101. In addition to this document in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via the Local Notice to Mariners, Broadcast Notice to Mariners, and local advertising by the event sponsor.

If the Captain of the Port Sector San Diego or his designated representative determines that the regulated area need not be enforced for the full duration stated on this document, he or she may use a Broadcast Notice to Mariners or other communications coordinated with the event sponsor to grant general permission to enter the regulated area.

Dated: October 21, 2016.

J.R. Buzzella,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. 2016–26869 Filed 11–4–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 2 and 7

[Docket No. PTO–T–2016–0005]

RIN 0651–AD08

Trademark Fee Adjustment; Correction

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to tables included in the preamble of the final rule implementing changes to trademark fees published in the **Federal Register** of Friday, October 21, 2016.

DATES: This rule is effective on January 14, 2017.

FOR FURTHER INFORMATION CONTACT: Catherine Cain, Office of the Deputy Commissioner for Trademark Examination Policy, by email at *TMPolicy@uspto.gov,* or by telephone at (571) 272–8946.

SUPPLEMENTARY INFORMATION:

Need for Correction: As published, the regulatory and explanatory text in the final rule implementing changes to trademark fees (81 FR 72694; October 21, 2016) are correct. However, certain tables included in the preamble contain minor errors. In the tables entitled ''Fees for Paper Filings'' and ''New Fees for Extensions of Time at the TTAB,'' the descriptions for certain fees listed were mistakenly transposed. In the table entitled ''Other Trademark-Processing Fees [Extension of time to file a statement of use],'' a CFR citation contained a typographical error. Good cause exists to issue this rule without prior notice and opportunity for comment as the corrections are non-substantive and are being implemented to avoid inconsistencies and any confusion that may occur when comparing the items in the tables with the regulatory text. The USPTO corrects the errors as discussed below.

In FR Doc. 2016–25506, appearing on page 72694 in the **Federal Register** of Friday, October 21, 2016, make the following corrections:

1. On page 72697, in the table entitled ''Fees for Paper Filings,'' revise the following:

a. In the entry for 2.6(a)(22)(i), the Description is corrected to read ''Filing a Request for an Extension of Time to File a Notice of Opposition under § 2.102(c)(1)(ii) or (c)(2) on Paper,'' and

b. In the entry for 2.6(a)(23)(i), the Description is corrected to read ''Filing a Request for an Extension of Time to File a Notice of Opposition under § 2.102(c)(3) on Paper.''

2. On page 72700, the table entitled ''Other Trademark-Processing Fees [Extension of time to file a statement of use]'' is corrected to read as follows:

OTHER TRADEMARK-PROCESSING FEES

[Extension of time to file a statement of use]

37 CFR	Fee code	Description	Current fee	Final rule fee	Change
2.6(a)(4)(i)	6004	Filing a Request under § 1(d)(2) of the Act for a Six-Month Extension of Time for Filing a Statement of Use under § 1(d)(1) of the Act on Paper, per Class.	$150	$225	$75
2.6(a)(4)(ii)	7004	Filing a Request under § 1(d)(2) of the Act for a Six-Month Extension of Time for Filing a Statement of Use under § 1(d)(1) of the Act through TEAS, per Class.	150	125	(25)

3. On page 72701, the table entitled ''New Fees for Extensions of Time at the TTAB'' is corrected to read as follows:

NEW FEES FOR EXTENSIONS OF TIME AT THE TTAB

37 CFR	Fee code	Description	Current fee	Final rule fee	Change
2.6(a)(22)(i)	New	Filing a Request for an Extension of Time to File a Notice of Opposition under § 2.102(c)(1)(ii) or (c)(2) on Paper.		$200	n/a
2.6(a)(22)(ii)	New	Filing a Request for an Extension of Time to File a Notice of Opposition under § 2.102(c)(1)(ii) or (c)(2) through ESTTA.	n/a	100	n/a
2.6(a)(23)(i)	New	Filing a Request for an Extension of Time to File a Notice of Opposition under § 2.102(c)(3) on Paper.	n/a	300	n/a
2.6(a)(23)(ii)	New	Filing a Request for an Extension of Time to File a Notice of Opposition under § 2.102(c)(3) through ESTTA.	n/a	200	n/a

Dated: October 28, 2016.

Michelle K. Lee,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2016–26684 Filed 11–4–16; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 49 and 52

[EPA–HQ–OAR–2015–0782; FRL–9954–88–OAR]

RIN 2060–AS56

Rescission of Preconstruction Permits Issued Under the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is promulgating amendments to the EPA's federal Prevention of Significant Deterioration (PSD) regulations to remove a date restriction from the Permit Rescission provision. Other than removing the date restriction, this final rule does not alter the criteria under which a new source review (NSR) permit may be rescinded. This final rule also clarifies that a rescission of a permit is not automatic and corrects an outdated cross-reference to another part of the PSD regulations. The EPA is also adding a corresponding Permit Rescission provision in the federal regulations that apply to major sources in nonattainment areas of Indian country.

DATES: This final rule is effective on December 7, 2016.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2015–0782. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.,* 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 electronically in *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For further general information on this rulemaking, contact Ms. Jessica Montanez, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency (C504–03), Research Triangle Park, NC 27711, by phone at (919) 54l-3407, or by email at *montanez.jessica@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated entities. The Administrator determined that this action is subject to the provisions of Clean Air Act (CAA or Act) section 307(d). CAA section 307(d)(1)(V) (the provisions of CAA section 307(d) apply to ''such other actions as the Administrator may determine''). These are amendments to existing regulations and could affect any facility that is eligible for a PSD permit rescission for any such permit issued by the EPA, reviewing authorities that implement the EPA's regulations through delegation or reviewing authorities that incorporate the federal PSD regulations by reference.

I. General Information

A. Does this action apply to me?

Entities potentially affected by this final rulemaking include reviewing authorities responsible for the permitting of stationary sources of air pollution, including the following: The EPA Regional offices; air agencies that have delegated authority to implement the EPA regulations; and air agencies that administer EPA-approved air programs that incorporate the federal NSR rules by reference. Entities also potentially affected by this final rulemaking include owners and operators of stationary sources subject to NSR permitting programs under the CAA that are administered by the entities described previously.

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

In addition to being available in the docket, an electronic copy of this notice will be posted at: *https://www.epa.gov/nsr/nsr-regulatory-actions.* Upon publication in the **Federal Register**, only the published version may be considered the final official version of the notice, and will govern in the case of any discrepancies between the **Federal Register** published version and any other version.

C. How is this document organized?

The information presented in this document is organized as follows:

I. General Information
- A. Does this action apply to me?
- B. Where can I get a copy of this document and other related information?
- C. How is this document organized?

II. Background for Final Rulemaking
III. Overview of the Final Revisions
- A. What are the final revisions to the 40 CFR part 52 Permit Rescission provision?
- B. What are the final revisions to the 40 CFR part 49 Indian country nonattainment NSR provisions?
- C. What is the basis for the EPA's final revisions?

IV. Environmental Justice Considerations
V. Statutory and Executive Order Reviews
- A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
- B. Paperwork Reduction Act (PRA)
- C. Regulatory Flexibility Act (RFA)
- D. Unfunded Mandates Reform Act (UMRA)
- E. Executive Order 13132: Federalism
- F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
- G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
- H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer and Advancement Act (NTTAA)
- J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
- K. Congressional Review Act (CRA)
- L. Judicial Review

VI. Statutory Authority

II. Background for Final Rulemaking

On June 14, 2016, the EPA proposed revisions to the Permit Rescission provision in the EPA's federal PSD regulations at 40 CFR 52.21(w). The proposed revisions remove a date restriction from this provision, clarify that a rescission of a permit is contingent on the reviewing authority's concurrence with a rescission applicant's demonstration that the PSD permit provisions ''would not apply to the source or modification,'' and correct an outdated cross-reference to another part of the PSD regulations. The EPA also proposed to add a corresponding Permit Rescission provision in the federal regulations that apply to major sources in nonattainment areas of Indian country.

The preamble to the proposal provided an overview of the NSR permitting program and a brief history of the previous revisions to the Permit Rescission provision regulations. The preamble also explained the EPA's basis for the proposed changes and rationale. Because the EPA is finalizing this rule as it was proposed, this final rulemaking notice does not repeat that discussion.

The 30-day public comment period for the proposed rule closed on July 14, 2016. In Section III of this document, we summarize and respond to the comments received and explain the

basis for the regulatory text revisions made by this final rule.

III. Overview of the Final Revisions

A. What are the final revisions to the 40 CFR part 52 Permit Rescission provision?

In this final rule, we are making three specific revisions to the Permit Rescission provision in the PSD regulations at 40 CFR part 52. First, we are revising 40 CFR 52.21(w)(2) to remove the July 30, 1987, date restriction. Second, we are revising 40 CFR 52.21(w)(3) to change the word ''shall'' to ''may'' to make clear that this provision does not create a mandatory duty on the Administrator to grant a rescission request. Lastly, we are revising 40 CFR 52.21(w)(1) to appropriately cross reference paragraph (r) and not paragraph (s) of our PSD regulations.

The PSD Permit Rescission provision is applicable for the EPA Regions and other reviewing authorities that are delegated authority by the EPA to issue PSD permits on behalf of the EPA (via a delegation agreement). The provision also applies to reviewing authorities that have their own PSD rules approved by the EPA in a State Implementation Plan (SIP) where the SIP incorporates 40 CFR 52.21(w) by reference.

B. What are the final revisions to the 40 CFR part 49 Indian country nonattainment NSR provisions?

This final rule adds a provision to 40 CFR 49.172(f) to provide authority to rescind nonattainment new source review (NA NSR) permits in Indian country. This provision mirrors the provision being finalized at 40 CFR 52.21(w) by providing the EPA and delegated permit reviewing authorities the authority to rescind NA NSR permits where the application for rescission adequately shows that the NA NSR rules for Indian country at 40 CFR 49.166 through 49.173 would not apply to the source or modification. This provision also includes methods for adequate notice of the rescission determination in accordance with the public noticing requirements for NA NSR permits in Indian country.

C. What is the basis for the EPA's final revisions?

1. Removal of the July 30, 1987, Date Restriction in 40 CFR 52.21(w)(2)

a. Summary of the EPA's Basis for This Action

As stated in the proposal, experience has shown that there can be circumstances where the EPA believes rescission of a permit issued under the PSD rules in effect after July 30, 1987, may be appropriate under the criteria in paragraph (w)(3) of the Permit Rescission provision. In one recent instance, the EPA determined a need for rescission authority after the Supreme Court of the United States (Supreme Court) determined that the EPA may not treat greenhouse gases (GHGs) as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD permit. *Utility Air Regulatory Group* v. *Environmental Protection Agency,* 134 S.Ct. 2427 (2014) (''*UARG*''). However, because of the date restriction in the former PSD Permit Rescission provision, the EPA had to revise this Permit Rescission regulation to expressly allow rescission of permits granted for sources based solely on the emissions of GHGs. May 7, 2015; 80 FR 26183. The EPA believes removal of the date restriction is appropriate to improve implementation efficiency and eliminate the need to conduct similar targeted rulemakings in the future.

b. Summary of Comments

Two commenters generally supported the removal of the date restriction. One commenter believes that the right for a source to request a permit rescission should be ongoing. The other commenter noted that the amendment is intended to allow a CAA permit holder the ability to request that the EPA rescind permits that would no longer be required under the current regulations. Nevertheless, another commenter questioned why the revision was necessary since (1) the EPA already amended the Permit Rescission provision to accommodate rescission of permits affected by the *UARG* decision and (2) the EPA has made only two other minor adjustments to rescind certain permits over the past 36 years.

c. EPA Response

We agree with those commenters that support removal of the July 30, 1987, date restriction from the PSD Permit Rescission provision. As we discussed in the proposed rule preamble, the EPA has periodically found a need to amend this provision. Although the instances under which PSD permit rescissions are appropriate are limited and the EPA has made a limited number of amendments to 40 CFR 52.21(w) since it was initially adopted, the purpose for these rule amendments is forward-looking. We expect future instances under which rescission of PSD permits issued after July 30, 1987, would be appropriate under the criteria in paragraph (w)(3) of the current Permit Rescission provision. Therefore, in this final rule the EPA is finalizing the removal of the July 30, 1987, date to obviate the need to make further changes to this regulation in the future.

2. Revision to 40 CFR 52.21(w)(3) To Clarify That the EPA Administrator Does Not Have a Mandatory Duty To Grant a Rescission Request

a. Summary of the EPA's Basis

The EPA proposed to revise 40 CFR 52.21(w)(3) to make it clear that the provision does not create a mandatory duty on the Administrator to grant a rescission request. Specifically, the EPA proposed to replace the word ''shall'' with the word ''may'' in this provision to make clear that the Administrator may deny a permit rescission request if he or she does not concur with the analysis by the permit applicant that 40 CFR 52.21 ''would not apply to the source or modification.''

b. Summary of Comments

One commenter recommended that we retain the existing language in 40 CFR 52.21(w)(3) as ''shall'' instead of ''may.'' The commenter believed that the existing language in the regulation provides the Administrator discretion to grant a rescission request since the ''if'' in that regulatory text shows that a source has the burden of proof to establish that a source is eligible for the permit rescission and there is no guaranteed EPA approval.

c. EPA Response

The EPA continues to believe that it is appropriate to change the word ''shall'' to ''may'' in this provision to clarify that the Administrator may deny a permit rescission request if he or she does not concur with the analysis by the permit applicant that 40 CFR 52.21 ''would not apply to the source or modification.'' The word ''shall'' is commonly used in statutes and regulations to describe a mandatory requirement. Even if other words in 40 CFR 52.21(w)(3) convey that a reviewing authority has discretion to deny a request, the EPA believes the regulation should be clear. We believe it is clearer to use discretionary language that conveys the meaning more directly so one does not have to rely on context to determine the meaning. As stated in the proposal, the EPA does not believe this revision changes the meaning or intent of the existing provision, but rather clarifies the discretion held by the Administrator. Thus, the EPA is finalizing this revision in this final rule.

3. Corrected Cross-Reference in 40 CFR 52.21(w)(1)

a. Summary of the EPA's Basis

We proposed to correct 40 CFR 52.21(w)(1) because it currently references 40 CFR 52.21(s), which pertains to environmental impact statements. 40 CFR 52.21(w)(1) pertains to permit expiration and rescission, so the correct reference should be 40 CFR 52.21(r), which pertains to permit expiration in our federal PSD regulations.

b. Summary of Comments and Final EPA Action

The EPA received no comments on this proposed correction and is finalizing this correction as proposed. We believe 40 CFR 52.21(r) is the correct reference for 40 CFR 52.21(w)(1).

4. Addition of Permit Rescission Authority to the Nonattainment NSR Regulations for Indian Country

a. Summary of the EPA's Basis

We also proposed to add a provision in 40 CFR 49.172(f) to provide rescission authority for major NA NSR permits in Indian country. This new regulatory text includes public notice requirements consistent with the noticing requirements applicable to major NA NSR permits in Indian country. 40 CFR 49.171. The EPA has determined it is appropriate to allow rescission of NA NSR permits in Indian country in limited, case-specific circumstances for the same reasons it is appropriate to allow rescission of PSD permits in narrow circumstances. Creating a Permit Rescission provision in 40 CFR part 49 for major NA NSR permits in Indian country would ensure that all federal programs for major source permitting have permit rescission authority.

b. Summary of Comments and Final EPA Action

The EPA received no comments on this proposed provision. The EPA is finalizing the addition of permit rescission authority for major NA NSR permits in Indian country as proposed.

5. Other Issues Raised in Comments

a. Establishing Specific Criteria for Granting or Denying a Permit Rescission Request

i. Summary of Comments

Various commenters requested that the EPA establish specific criteria under which the EPA would grant or deny a permit rescission request. Commenters noted that without such criteria, implementation of the Permit Rescission provision may be inconsistent between reviewing authorities with EPA-approved SIPs incorporating 40 CFR 52.21(w) and reviewing authorities that, for example, implement the federal PSD rules through delegation.

One commenter stated that the EPA should withdraw its proposal and re-propose the amendment to the PSD Permit Rescission provision and the addition of this provision to the major NA NSR program in Indian country with specific criteria for when a permittee would be eligible for rescission

Another commenter argued that in the preamble and through other discussions between the EPA and the National Association of Clean Air Agencies members, the EPA staff have indicated that our intent is to limit permit rescissions to cases in which court decisions have changed the PSD rules or situations in which the PSD rules have changed and gone through all comment periods and reconsiderations. The commenter added that the proposed rule language does not state this.

ii. EPA Response

As stated in the proposal, the EPA believes there are a limited number of circumstances where a permit rescission is justified and that permit rescission requests are very case-specific. Review of a rescission request requires an in-depth evaluation of the source, the rules in place at the time, and the court decisions or other events affecting the source before it can be determined that the requirements of 40 CFR 52.21 ''would not apply to the source or modification.'' 40 CFR 52.21(w)(3). The principal aim of this targeted rulemaking action is to remove an unnecessary impediment to rescissions of permits issued after the date specified in the existing version of 40 CFR 52.21(w) and therefore avoid the need for future revisions to 40 CFR 52.21(w). Although the EPA generally believes permit rescissions are warranted in a limited category of circumstances, specifically defining that category of circumstances would be contrary to the goals of this rule to provide flexibility going forward to address circumstances that may not have been previously anticipated or experienced. Therefore, we do not believe it is appropriate to develop specific *a priori* criteria for when a permit rescission would be granted or denied, nor do we agree with the commenter that argued that permit rescissions are limited only to cases in which court decisions have changed the PSD rules or situations in which the PSD rules have changed and gone through all comment periods and reconsiderations. Thus, the EPA is not including specific criteria for PSD permit rescissions and NA NSR permit rescissions in Indian country in this final rule.

b. Clarifying Whether the EPA Would Grant Permit Rescission Requests Under Specific Circumstances

i. Summary of Comments

A few commenters provided specific examples of circumstances where they believe PSD permit rescissions or rescission of PSD related terms and conditions in other types of air permits could qualify for permit rescission. These circumstances include:

1. Requesting PSD permit rescissions when situations such as energy efficiency improvements and changes in operations cause a source to no longer be a major PSD stationary source.

2. Allowing a permit rescission when a pollutant is no longer regulated under the PSD program because the EPA established a CAA section 112 emission limitation, as long as existing limitations in the PSD permits are less restrictive than the applicable section 112 limitations and no increase in emission of another NSR regulated pollutant would be caused by the rescission.

3. Allowing PSD permits to be rescinded after a source takes limits at a future date to restrict emissions below the major source thresholds.

One commenter also stated that the EPA should allow a source to request removal of related obligations including synthetic minor PSD permit limits or no longer applicable or obsolete PSD conditions in its federal or PSD-approved state or local construction permit(s) and/or title V operating permits.

ii. EPA Response

The EPA's longstanding policy has been to evaluate permit rescission requests on a case-by-case basis since there are multiple factors that need to be considered when evaluating whether a source is eligible for a PSD permit rescission. As we stated previously, PSD permit rescissions require an in-depth evaluation of the source, the rules in place at the time, and the court decisions or other events affecting the source before it can be determined that the requirements of 40 CFR 52.21 ''would not apply to the source or modification.'' 40 CFR 52.21(w)(3). As such, the EPA cannot say *a priori* whether the circumstances raised by the commenters would always be eligible or not for permit rescission. In addition, based on past experience, the EPA

believes that it would not be typical for major sources to seek PSD permit rescissions.

Furthermore, the scope of this rule is limited to PSD and NA NSR permitting and does not address the revision or rescission of permits that are not major NSR permits. Therefore, whether to allow a source to request removal of related obligations in non-major NSR permits, such as synthetic minor permits or title V operating permits, is outside the scope of this rulemaking.

c. Specifying That PSD Permits Issued Before the Promulgation of the 2007 Final Ethanol Rule Can Be Rescinded Under the Revised Permit Rescission Provision

i. Summary of Comments

A couple of commenters asked the EPA to clarify that the revised PSD Permit Rescission provision would apply to PSD permits for fuel ethanol plants that were issued before July 2, 2007, specifically fuel ethanol plants that are no longer considered ''major'' under the revised major source applicability threshold for ''chemical processing plants.'' According to one of these commenters, the EPA acknowledged in the Ethanol Rule that PSD permits issued under the 100 tons per year (tpy) major source threshold for sources that would not trigger the revised 250 tpy threshold would be eligible to take advantage of the PSD Permit Rescission provision. 72 FR 24060, 24071.

In addition, this same commenter claims that the situation presented by the Ethanol rule is analogous to the situations described in the preamble where the EPA previously revised the Permit Rescission provision to respond to the United States District of Columbia Circuit (D.C. Circuit) Court decision in *Alabama Power* and when the EPA transitioned from the Total Suspended Particulates to the Particulate Matter 10 micrometers in diameter or less indicator for the Particulate Matter National Ambient Air Quality Standard.

Finally, the commenter claims that the equal protection clause, found in 14th Amendment of the United States Constitution and Article I, Section I of the Wisconsin State Constitution, supports rescission of pre-2007 PSD permits issued for fuel ethanol facilities. According to the commenter, treating ethanol facilities built prior to the adoption of the Ethanol Rule (''Pre-2007) and those built after the adoption of the Ethanol Rule differently is a disparity between two similarly situated classes distinguished only by year.

ii. EPA Response

For the reasons stated in Sections III.C.5.a and III.C.5.b of this rule, we do not believe it is appropriate in this rule to address specific circumstances when a permit rescission may be granted or denied. In addition and as one commenter argues, the EPA did not acknowledge in the Ethanol Rule that PSD permits issued under the 100 tpy major source threshold for sources that would not trigger the revised 250 tpy threshold would be eligible to take advantage of the PSD Permit Rescission provision discussed in this rule.

Historically, corn milling facilities that produced ethanol only for fuel use were considered by the EPA to be part of the ''chemical process plants'' category while facilities that produced ethanol only for human consumption were not considered by the EPA to be in that category. Under the PSD definition of major stationary source, ''chemical process plants'' is one of the source categories listed in 40 CFR 52.21(b)(1)(i) for which a source with a potential to emit a regulated NSR pollutant [1] in an amount equal to or higher than 100 tpy is subject to PSD permitting. All other non-listed source categories are subject to permitting if the source has the potential to emit a regulated NSR pollutant in an amount equal to or higher than 250 tpy. On May 1, 2007, the EPA modified the definition of the ''chemical process plants'' category of sources by removing corn milling facilities that produce ethanol only for fuel use from this definition. This change established the same 250 tpy major source applicability threshold for ethanol producing facilities regardless of whether a source produces ethanol for human consumption, for fuel, or for an industrial purpose.

On July 2, 2007, the EPA received a petition for reconsideration pursuant to section 307(d)(7)(B) of the CAA, which the EPA denied in its entirety on March 27, 2008.[2] On March 2, 2009, the EPA received a second petition for reconsideration, and we are currently in the process of considering that petition. Furthermore, this rule and the EPA's denial of the first petition for reconsideration have been challenged in the D.C. Circuit. That litigation is currently being held in abeyance pending the outcome of the second petition for reconsideration.

Since this second petition for reconsideration is currently under evaluation by the EPA, we believe it is premature to say in this rule whether pre-2007 fuel ethanol PSD permits would meet the regulatory criteria for a permit rescission under 40 CFR 52.21(w)(3).

d. Comments on the Scope of the Proposed Revisions to the Permit Rescission Provision

i. Summary of Comments

One commenter would like the EPA to confirm that the amendment does not allow either the EPA or other reviewing authorities to use the Permit Rescission provision to unilaterally rescind or suspend a duly issued CAA NSR permit without the request of the permittee. Specifically, the commenter would like the EPA to clarify that officials do not intend for the proposed amendment to authorize any permit reviewing authority to: (1) Use this provision to either require updates of state SIPs, or rescind existing SIPs or disapprove future updates of SIPs (*i.e.,* there is no obligation based on this rule change for states to modify SIPs); (2) Use the proposed amendment to rescind any permit without a written request from the owner/operator of the source; (3) Use the proposed amendment to trigger any changes to existing permitted emission limits (*e.g.,* Potential to Emit, Plantwide Applicability Limits, applicable New Source Performance Standards, or unit-specific permit limits); or (4) Use the proposed amendment provision in any way that would alter the calculation (for an affected source) of significant emissions increase or net significant emission increase.

ii. EPA Response

The amended regulatory text in the Permit Rescission provision does not allow either the EPA or any other reviewing authorities to unilaterally rescind or suspend a duly issued CAA NSR permit without the request of the permittee. These provisions also do not alter other CAA requirements, such as state SIP provisions on topics other than NSR permitting. As discussed in the next section, the revisions also should not affect NSR permitting requirements in approved SIPs unless those SIPs incorporate § 52.21(w) by reference. The Permit Rescission provision in 40 CFR 49.172(f) and 40 CFR 51.21(w) only applies for the rescission of PSD permits under the federal PSD permitting regulations and NA NSR permits in Indian country, respectively, upon request for rescission application of a permittee when the Administrator

[1] As defined in 40 CFR 52.21(b)(50).

[2] Details of the EPA's denial of the petition for reconsideration can be found at: *https://www.epa.gov/sites/production/files/2015-12/documents/20080327letter.pdf.*

deems such rescission is consistent with the regulatory terms.

e. Comments on State Requirements for PSD Permit Rescissions

i. Summary of Comments

One commenter would like the EPA to clarify if this final action applies to states with EPA-approved SIPs. A different commenter argued that the EPA should allow states with EPA-approved SIP programs to use existing EPA-approved permitting procedures to rescind PSD permits and not require states with EPA-approved SIP programs to develop new rules that mirror 40 CFR 51.21(w)(2).

ii. EPA's Response

As we stated in the proposal, this final action does not apply to states with EPA-approved SIPs unless they incorporate 40 CFR 52.21(w) by reference. We did not propose amendments to 40 CFR part 51 to revise the permitting provisions applicable to state and local programs. Therefore, these revisions to the PSD Permit Rescission provision do not apply to SIP-approved programs unless they incorporate the federal PSD Permit Rescission provision by reference. States will not be required to make any changes to their SIP-approved programs as a result of this rule.

IV. Environmental Justice Considerations

The revisions being finalized in this rule improve implementation efficiency for the Permit Rescission provision by eliminating the date restriction, correcting an outdated cross-reference and clarifying that a rescission of a permit is not automatic (the Administrator may grant a PSD permit rescission only if the application shows that the PSD rules would not apply to the source or modification). In addition, we are adding a provision in 40 CFR 49.172(f) to provide rescission authority for major NA NSR permits in Indian country for the same reasons it is appropriate to allow rescission of PSD permits and to ensure that all federal programs for major source permitting have permit rescission authority. Reviews of permit rescission requests after the finalization of this rule will continue to require an in-depth evaluation of the source, the rules in place at the time, and the court decisions or other events affecting the source before it can be determined that the requirements of 40 CFR 49.166 through 49.173 for the NA NSR program in Indian country or 40 CFR 52.21 for the PSD program ''would not apply to the source or modification.'' Thus, we do not believe that these revisions and additions to the rescission of federal major NSR permits will have any effect on environmental justice communities.

V. Statutory and Executive Order Reviews

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

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

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0003 for the PSD and NA NSR permit programs. We believe that the burden associated with rescinding federal NSR permits is already accounted for under the approved information collection requests.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. Entities potentially affected directly by this proposal include state, local and tribal governments and none of these governments would qualify as a small entity. Other types of small entities are not directly subject to the requirements of this action.

D. Unfunded Mandates Reform Act (UMRA)

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

E. Executive Order 13132: Federalism

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

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

This action does not have tribal implications, as specified in Executive Order 13175. Specifically, these revisions do not affect the relationship or distribution of power and responsibilities between the federal government and Indian tribes. This action only extends the EPA's permit rescission authority to the EPA regions that currently implement the NA NSR program in Indian country or tribes that would like to implement the NA NSR program through a delegation of these federal rules. Thus, Executive Order 13175 does not apply to this action.

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

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

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

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This action does not involve technical standards.

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

The documentation for this decision is contained in Section IV of this document titled, ''Environmental Justice Considerations.''

K. Congressional Review Act (CRA)

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

L. Judicial Review

Under CAA section 307(b)(1), petitions for judicial review of any nationally applicable regulation, or any action the Administrator ''finds and publishes'' as based on a determination of nationwide scope or effect must be filed in the United States Court of Appeals for the District of Columbia Circuit within 60 days of the date the promulgation, approval, or action appears in the **Federal Register**. This action is nationally applicable, as it adds Permit Rescission provisions to 40 CFR part 49 and revises the rules governing procedures permit rescissions in 40 CFR part 52. As a result, petitions for review of this final action must be filed in the United States Court of Appeals for the District of Columbia Circuit by January 6, 2017. Filing a petition for reconsideration by the Administrator of this final action does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of this action.

VI. Statutory Authority

The statutory authority for this action is provided by 42 U.S.C. 7401, *et seq.*

List of Subjects

40 CFR Part 49

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference.

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference.

Dated: October 26, 2016.

Gina McCarthy,

Administrator.

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

PART 49—INDIAN COUNTRY: AIR QUALITY PLANNING AND MANAGEMENT

■ 1. The authority citation for part 49 continues to read as follows:

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

Subpart C—General Federal Implementation Plan Provisions

■ 2. Section 49.172 is amended by adding paragraph (f) to read as follows:

§ 49.172 Final permit issuance and administrative and judicial review.

* * * * *

(f) *Can my permit be rescinded?* (1) Any permit issued under this section or a prior version of this section shall remain in effect until it is rescinded under this paragraph (f).

(2) An owner or operator of a stationary source or modification who holds a permit issued under this section for the construction of a new source or modification that meets the requirement in paragraph (f)(3) of this section may request that the reviewing authority rescind the permit or a particular portion of the permit.

(3) The reviewing authority may grant an application for rescission if the application shows that §§ 49.166 through 49.173 would not apply to the source or modification.

(4) If the reviewing authority rescinds a permit under this paragraph (f), the public shall be given adequate notice of the rescission determination in accordance with one or more of the following methods:

(i) The reviewing authority may mail or email a copy of the notice to persons on a mailing list developed by the reviewing authority consisting of those persons who have requested to be placed on such a mailing list.

(ii) The reviewing authority may post the notice on its Web site.

(iii) The reviewing authority may publish the notice in a newspaper of general circulation in the area affected by the source. Where possible, the notice may also be published in a Tribal newspaper or newsletter.

(iv) The reviewing authority may provide copies of the notice for posting at one or more locations in the area affected by the source, such as Post Offices, trading posts, libraries, Tribal environmental offices, community centers or other gathering places in the community.

(v) The reviewing authority may employ other means of notification as appropriate.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart A—General Provisions

■ 4. Section 52.21 is amended by revising paragraphs (w)(1) through (3) to read as follows:

§ 52.21 Prevention of significant deterioration of air quality.

* * * * *

(w) * * *

(1) Any permit issued under this section or a prior version of this section shall remain in effect, unless and until it expires under paragraph (r) of this section or is rescinded under this paragraph (w).

(2) An owner or operator of a stationary source or modification who holds a permit issued under this section for the construction of a new source or modification that meets the requirement in paragraph (w)(3) of this section may request that the Administrator rescind the permit or a particular portion of the permit.

(3) The Administrator may grant an application for rescission if the application shows that this section would not apply to the source or modification.

* * * * *

[FR Doc. 2016–26593 Filed 11–4–16; 8:45 a.m.]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2016–0042; FRL–9954–40–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Revisions and Amendments to Regulations for Continuous Opacity Monitoring, Continuous Emissions Monitoring, and Quality Assurance Requirements for Continuous Opacity Monitors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the State of Maryland. The revision pertains to changes and amendments to Maryland regulations for continuous opacity monitoring (COM or COMs) and continuous emissions monitoring (CEM or CEMs) and to an amendment adding requirements for Quality Assurance and Quality Control (QA/QC) as they pertain to COMs. EPA is approving these revisions to the COMs and CEMs requirements in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on December 7, 2016.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2016–0042. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *http://www.regulations.gov*, or please contact the person identified in the ''For Further Information Contact'' section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, (215) 814–2308, or by email at *powers.marilyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On June 17, 2016 (81 FR 39605), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. In the NPR, EPA proposed approval of revisions and amendments to COMAR 26.11.01 *General Administrative Requirements* related to requirements for COMs and CEMs and the addition of new COMAR 26.01.31 *Quality Assurance Requirements for Continuous Opacity Monitors (COMs).* The formal SIP revision (#15–05) was submitted by Maryland through the Maryland Department of the Environment (MDE) on November 24, 2015. On February 26, 2016, MDE provided a supplemental letter indicating MDE was excluding portions of COMAR 26.11.01.10 submitted in the November 24, 2015 SIP submittal from EPA's review and consideration as a SIP revision. The February 26, 2016 letter from MDE is available in the docket for this rulemaking and is available online at *http://www.regulations.gov.*[1]

EPA had previously approved Maryland regulation COMAR 26.11.01.10 *Continuous Emissions Monitoring (CEM) Requirements* into the Maryland SIP on February 28, 1996. 61 FR 7418. COMAR 26.11.01.10 required large fuel-burning equipment burning coal and residual oil to install COMs and demonstrate compliance using COM data. The regulation established monitoring requirements, CEM installation requirements, CEM installation and certification schedules, quality assurance procedures for opacity monitors, and record keeping and reporting requirements. The regulation had previously incorporated by reference Maryland's Technical Memorandum 90–01 (TM 90), and required compliance determinations for the State's visible emissions limits and QA/QC for COMs in accordance with the procedures therein. The terms CEMs and COMs were used interchangeably in COMAR 26.11.01.10; therefore, MDE determined it was necessary to establish separate requirements for each.

The November 24, 2015 SIP submittal, as clarified and amended on February 26, 2016 by MDE, includes revisions to COMs and CEMs definitions in COMAR 26.11.01.01, administrative changes to reporting and recordkeeping requirements in COMAR 26.11.01.05, a revised COMAR 26.11.01.10 for COMs, a new COMAR 26.11.01.11 for CEMs, and new COMAR 26.11.31 for QA/QC procedures related to COMs. The November 24, 2015 submittal, as amended by MDE's February 26, 2016 letter, removes the requirement to use TM 90 for enforcement actions and for QA/QC requirements on applicable fuel-burning equipment and removes references to TM 90.

II. Summary of SIP Revision

The SIP revision is comprised of four state actions pertaining to adjusted requirements for COMs and CEMs in COMAR 26.11.01.01, COMAR 26.11.01.05 and COMAR 26.11.01.10, new CEMs provisions in COMAR 26.11.01.11, and new QA/QC requirements in COMAR 26.11.31. These four actions are a series of regulatory actions that result in a recodification of some existing requirements for COMs and CEMs, establishment of separate regulations and requirements for COMs and CEMs, removal of applicability of TM 90 for certain fuel-burning equipment and removal of references to TM 90, and codification of the QA/QC requirements for COMs that were formerly incorporated by reference in TM 90 into a new COMAR 26.11.31. Other specific requirements of the revised and amended COMAR regulations, and the rationale for EPA's approval action finding the regulations in accordance with section 110 of the CAA are explained in the NPR and in EPA's Technical Support Document (TSD) dated April 5, 2016, and will not be restated here. The NPR and TSD can be found in the docket for this rulemaking action available online at *http://www.regulations.gov.*

III. Public Comments and EPA Responses

EPA received one set of comments on the proposal from the Environmental Integrity Project and the Chesapeake Climate Action Network (collectively referred to herein as ''Commenter''). This set of these comments is provided in the docket for today's final rulemaking action.

Comment 1: The Commenter stated that it thought the SIP revision would improve the Maryland SIP because it separates the requirements for COMs from the requirements for CEMs. However, because of its concern regarding some of Maryland's permitting and enforcement actions on opacity and particulate matter (PM) issues, the Commenter submitted comments ''to explain our understanding of the effect of the SIP revision that EPA is proposing to approve.'' The Commenter expressed concern with allowing ''ineffective technical methods'' in compliance demonstrations for opacity limits. The Commenter stated that a COM is an effective method of measuring compliance with Maryland's SIP opacity limits and reserved judgment on whether it is ever appropriate to substitute another technology for COMs to demonstrate compliance with opacity limits. The Commenter stated that if a technology is to be substituted for COMs, it should include PM CEMS paired with an approved method that accounts for the condensable portion of PM. The Commenter stated that, for various reasons, EPA Reference Method 9, by itself, is not a sufficient substitute for COMs due to infrequency and weather condition issues. The Commenter acknowledged that the proposed action to approve revisions to COMAR 26.11.01.10, 26.11.01.11 and 26.11.01.01 for the Maryland SIP does not ''allow Method 9 observations as a substitute for COM in compliance demonstrations for opacity.'' The Commenter noted that COMAR 26.11.01.10(A)(4), which allows fuel-burning sources to discontinue use of COMs under certain circumstances is not part of the November 24, 2015 SIP revision, as amended February 26, 2016, which EPA proposed to approve. Finally, the Commenter stated that no part of COMAR 26.11.09.05 [which contains Maryland's opacity limitation] was submitted with the November 24, 2015 SIP submittal, and thus no

[1] Specifically, in the February 26, 2016 letter from MDE to EPA, MDE withdrew from EPA's review and consideration the text in COMAR 26.11.01.10.A(4), in COMAR 26.11 .01.10.B(4), in COMAR 26.11.01.10D(2)(c), and in COMAR 26.11.01.10.F which had initially been included in the November 25, 2015 SIP submittal. MDE excluded provisions in COMAR 26.11.01.10 that refer to sections or subsections of COMAR 26.11.09 that are not yet in the State's SIP. MDE plans to submit the COMAR 26.11.09 revisions along with these related provisions for approval into the SIP at a later date.

provision in the November 24, 2015 SIP submission allows discontinuation of COM at fuel burning sources.

Response 1: EPA thanks the Commenter for its statements. EPA confirms Commenter's statement that the NPR did not propose any action on COMAR 26.11.09.05, which contains opacity limitations in Maryland, as no part of that regulation was included in the November 24, 2015 submittal. The version of COMAR 26.11.09.05 which EPA approved in 2007 remains in the SIP. *See* 72 FR 41891 (August 1, 2007) (approving version of COMAR 26.11.09.05 for SIP with State effective date of November 24, 2003). EPA also confirms that the NPR did not include proposed action on the provisions in COMAR 26.11.01.10(A)(4), addressing removal of COMS, as that portion of COMAR 26.11.01.10 was removed from EPA's consideration by a February 26, 2016 supplemental letter from MDE requesting that certain sections be struck from the submittal. In EPA's TSD which supported the NPR, EPA clearly explained the exclusions from our proposed approval action, stating that none of the newly adopted changes to COMAR 26.11.09 *Control of Fuel-Burning Equipment, Stationary Internal Combustion Engines, and Certain Fuel-Burning Installations* were included in the November 24, 2015 SIP submittal as MDE stated it intended to make further revisions to COMAR 26.11.09 before separately submitting for inclusion into the State's SIP. EPA also confirms that the NPR and TSD clearly indicated COMAR 26.11.01.10A(4), B(4), D(2)(c), and F were excluded from the November 24, 2015 SIP submittal by MDE's February 26, 2016 supplemental submission.

As to the Commenter's statement regarding the use of substitutes for COMs or the appropriateness of alternatives to use of COMs, EPA first notes that the comment is not germane to the regulation EPA proposed to approve in the NPR as COMAR 26.11.01.10 in the November 24, 2015 SIP submittal, as amended February 26, 2016, does not address alternatives to use of COMs to demonstrate compliance nor address substitutes. Thus, EPA provides no further response to the Commenter's general statement regarding appropriateness of substituting for COMs.

However, EPA notes generally that choice of compliance methods is left to State's for due consideration. Congress established the CAA such that each state has primary responsibility for assuring air quality within the state and such that each state determines an emission reduction program for its areas to attain and maintain air quality, subject to EPA approval, with such approval dependent upon whether the SIP as a whole meets the applicable requirements of the CAA. *See Commonwealth of Virginia, et al.,* v. *EPA,* 108 F.3d 1397, 1410 (D.C. Cir. 1997) (citing *Natural Resources Defense Council, Inc.* v. *Browner,* 57 F.3d 1122, 1123 (D.C. Cir. 1995)). While the requirement for Method 9 for compliance determinations is not part of the Maryland regulation for which EPA proposed approval, EPA notes that states have flexibility in devising and developing their choices as to the means of achieving attainment and maintenance of a NAAQS. This flexibility has been affirmed by the courts. *Id. See also Train* v. *NRDC,* 421 U.S. 60 (1975). EPA cannot disapprove a SIP revision simply based upon a state's choice of a particular emission monitoring requirement, such as a COM or CEM, as long as the SIP revision otherwise meets the requirements of the CAA. As explained in the NPR and the TSD, Maryland's November 24, 2015 SIP submission meets the requirements of the CAA under section 110.

With respect to the use of COMs, EPA Reference Method 9, or PM CEMs for determining compliance with opacity requirements, the choice of compliance methodology is a choice for the state as long as the state does not prohibit the use of credible evidence. EPA's credible evidence rule (62 FR 8314 (February 24, 1997)) provided clarifications regarding the use of any relevant credible evidence or information for determining compliance with an applicable emission limit or requirement. The credible evidence revisions consisted of various changes to 40 CFR 51.212, 52.12, 52.30, 60.11 and 61.12. These revisions provided minor modifications to existing regulatory provisions to clearly allow for the use of any credible evidence—that is, both reference test and comparable non-reference test data—to prove or disprove violations of the CAA in enforcement actions. These revisions make clear that EPA, states and citizens acting pursuant to section 304 of the CAA can prosecute actions for violations of CAA provisions and federally approved SIPs based exclusively on any credible evidence, without the need to rely on any data from a particular reference test (such as EPA Reference Method 9). The revisions also have the effect of eliminating any potential ambiguity regarding the use of non-reference test data, including COMs and CEMs, as a basis for supporting violations. 40 CFR 51.212 specifically provides that ''[f]or the purpose of . . . establishing whether or not a person has violated or is in violation of any standard in this part, the plan must not preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test or procedure had been performed.'' 40 CFR 51.212(c). In this rulemaking, EPA is approving a revision to COMAR 26.11.01.10 into the Maryland SIP which requires the use of COMs for determining compliance with SIP requirements. However, nothing in COMAR 26.11.01.10 precludes the use of credible evidence such as PM CEMs data or EPA Reference Method 9 readings to determine compliance with regulatory requirements including opacity limitations. Thus, the regulation at COMAR 26.11.01.10 submitted for SIP approval addresses and meets 40 CFR 51.212 as it does not preclude the use of credible evidence and addresses section 110 of the CAA for the Maryland SIP. The revisions to COMAR 26.11.01.01 and 26.11.01.10 and new provisions in COMAR 26.11.01.11 and 26.11.31 are approvable for the SIP. Because the Maryland regulation at COMAR 26.11.01.10 submitted for SIP approval does not specifically address substitution of other compliance methods or discontinuation of COMs at stationary sources, EPA provides no further response to Commenter's concerns regarding compliance methodologies.

Comment 2: The Commenter expressed concern about attempts to weaken the opacity limits in the Maryland SIP and about State regulatory changes that created exemptions to the opacity limits. However, the Commenter acknowledged that the exceptions to the opacity limits are contained in COMAR 26.11.09.05 and COMAR 26.11.01.10(A)(4), both of which are not a part of the SIP revision submittal that EPA proposed to approve in the NPR. Commenter acknowledged EPA's approval of the November 24, 2015 SIP submittal (as amended February 26, 2016) would not incorporate these ''exceptions into the SIP.''

Response 2: EPA thanks the Commenter for its acknowledgments. As the Commenter clearly stated, EPA's NPR does not propose action on any revised provisions in COMAR 26.11.09.05 nor propose any action on COMAR 26.11.01.10(A)(4), as MDE withdrew that provision from EPA's consideration with the February 26, 2016 supplemental letter. Thus, no further response is necessary to Commenter's statements.

III. Final Action

Pursuant to section 110 of the CAA, EPA is approving for the Maryland SIP the revisions to requirements for COMs and CEMs in COMAR 26.11.01.01, COMAR 26.11.01.05 and COMAR 26.11.01.10, approving new provisions for COMs and CEMs at COMAR 26.11.01.11 and approving new requirements for quality assurance for CEMs at COMAR 26.11.31.

IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the revised requirements for COMs and CEMs in COMAR 26.11.01.01, 26.11.01.05, 26.11.01.10, and 26.11.01.11 and QA/QC requirements for COMs in new regulation COMAR 26.11.31. Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.[2] EPA has made, and will continue to make, these materials generally available through *http://www.regulations.gov* and/or at the EPA Region III Office (please contact the person identified in the ''For Further Information Contact'' section of this preamble for more information).

V. Statutory and Executive Order Reviews

A. General Requirements

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, this rule 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.

B. Submission to Congress and the Comptroller General

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).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 6, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving COMs and CEMs revisions to Maryland regulations 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, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: September 29, 2016.

Shawn M. Garvin,

Regional Administrator, Region III.

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 V—Maryland

■ 2. In § 52.1070, the table in paragraph (c) is amended by:

■ a. Revising the entries for COMAR 26.11.01.01, COMAR 26.11.01.05, and COMAR 26.11.01.10; and

■ b. Adding the entries COMAR 26.11.01.11 and COMAR 26.11.31.

The revisions and additions read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

[2] 62 FR 27968 (May 22, 1997).

EPA-APPROVED REGULATIONS, TECHNICAL MEMORANDA, AND STATUTES IN THE MARYLAND SIP

Code of Maryland Administrative Regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR 52.1100
*	*	*	*	*
	26.11.01 General Administrative Provisions			
26.11.01.01	Definitions	5/17/2010	11/7/2016 [Insert **Federal Register** citation].	New definition for COMs and clarify definition for CEMs.
*	*	*	*	*
26.11.01.05	Records and Information	5/17/2010	11/7/2016 [Insert **Federal Register** citation].	(c)(172) Administrative changes to reporting and record-keeping requirements.
*	*	*	*	*
26.11.01.10	Continuous Opacity Monitoring	8/22/2010	11/7/2016 [Insert **Federal Register** citation].	(c)(106) Requirement to use TM 90–01 is removed. Exceptions: A(4), B(4), D(2)(c), and F.
26.11.01.11	Continuous Emissions Monitoring.	8/22/2010	11/7/2016 [Insert **Federal Register** citation].	
*	*	*	*	*
26.11.31	Quality Assurance Requirements for Opacity Monitors (COMs).	6/13/2011	11/7/2016 [Insert **Federal Register** citation].	
*	*	*	*	*

* * * * *

[FR Doc. 2016–26866 Filed 11–4–16; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2016–0285; FRL–9953–83-Region 1]

Air Plan Approval; NH; Rules for Reducing Particulate Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving State Implementation Plan (SIP) revisions submitted by the State of New Hampshire on March 31, 2011 and on July 23, 2013. These SIP revisions establish particulate matter (PM) and visible emissions (VE) standards for the following sources: foundries, smelters, and investment casting operations; hot mix asphalt plants; and sand and gravel sources, non-metallic mineral processing plants, and cement and concrete sources. In addition, EPA is approving a part of a SIP revision submitted by New Hampshire on March 12, 2003 that establishes procedures for testing opacity of emissions (*i.e.,* VE). This action is being taken under the Clean Air Act.

DATES: This rule is effective on December 7, 2016.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2016–0285. All documents in the docket are listed on the *http://www.regulations.gov* Web site. 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 at *http://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Alison C. Simcox, Environmental Scientist, Air Quality Planning Unit, Air Programs Branch (Mail Code OEP05–02), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts, 02109–3912; (617) 918–1684; *simcox.alison@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

I. Background and Purpose
II. Final Action
III. Incorporation by Reference
IV. Statutory and Executive Order Reviews

I. Background and Purpose

On August 22, 2016 (81 FR 56556), EPA published a Notice of Proposed Rulemaking (NPR) for the State of New Hampshire.

The NPR proposed approval of State Implementation Plan (SIP) revisions submitted by the State of New Hampshire on March 31, 2011 and July 23, 2013. The NPR also proposed approval of a part of a SIP revision submitted by the state on March 12, 2003. The March 2011 submittal included a regulation entitled ''Sand and Gravel Sources; Non-Metallic Mineral Processing Plants; Cement and Concrete Sources'' (New Hampshire Code of Administrative Rules Chapter (Env-A 2800)). The July 2013 submittal

included the following three regulations: ''Particulate Matter and Visible Emissions Standards'' (Env-A 2100); ''Ferrous and Non-Ferrous Foundries, Smelters, and Investment Casting Operations'' (Env-A 2400); and ''Hot Mix Asphalt Plants'' (Env-A 2700).

The four submitted regulations (Env-A 2100, 2400, 2700, and 2800) state that opacity shall be determined in accordance with test methods established in Env-A 807. Therefore, the NPR also proposed to approve Env-A 807, which was part of a SIP revision submitted by New Hampshire on March 12, 2003.

Two of the submitted regulations (Env-A 2100 and 2400) included affirmative defense provisions for malfunction, which is defined as a sudden and unavoidable breakdown of process or control equipment. The New Hampshire regulations were submitted to EPA after EPA issued a start-up, shut-down, and malfunction (SSM) SIP Call proposal in February 2013 (78 FR 12460), which would have allowed narrowly drawn affirmative defense provisions in SIPs for malfunction. However, following issuance of our SSM SIP Call proposal in February 2013 (78 FR 12460), a federal court ruled that the Clean Air Act precludes authority of the EPA to create affirmative defense provisions. On April 13, 2016, New Hampshire Department of Environmental Services (NH DES) sent a letter to EPA withdrawing the affirmative defense provisions in Chapter Env-A 2100 and 2400 (*i.e.,* 2103.03, and 2405). Therefore, EPA is approving all of the SIP revisions without the withdrawn portions.

Rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

II. Final Action

EPA is approving, and incorporating into the New Hampshire SIP, four regulations and part of one regulation, except for affirmative defense provisions in two of the regulations which NH DES has withdrawn. The four regulations include one regulation submitted by the State of New Hampshire on March 31, 2011, Sand and Gravel Sources; Non-Metallic Mineral Processing Plants; Cement and Concrete Sources (Env-A 2800), effective October 1, 2010; and three regulations submitted on July 23, 2013, Particulate Matter and Visible Emissions Standards (Env-A 2100), effective April 23, 2013; Ferrous and Non-Ferrous Foundries, Smelters, and Investment Casting Operations (Env-A 2400), effective April 23, 2013; and Hot Mix Asphalt Plants (Env-A 2700), effective February 16, 2013. As noted earlier, the affirmative defense provisions, which NH DES has withdrawn from its SIP submittals, are not included in this approval action and are contained in state law only in Env-A 2103.03 and 2405. EPA is also approving and incorporating into the New Hampshire's SIP, New Hampshire's Env-A 807 (''Testing for Opacity of Emissions''), effective October 31, 2002.

III. 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 New Hampshire Code of Administrative Rules described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available through *http://www.regulations.gov*.

IV. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 6, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects 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: September 27, 2016.

Michael Kenyon,

Acting Regional Administrator, EPA New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart EE—New Hampshire

■ 2. In § 52.1520, the table in paragraph (c) is amended by adding five entries for state citation ''Env-A 807'', ''Env-A 2100'', ''Env-A 2400'', ''Env-A 2700'', and ''Env-A 2800'' in alphanumeric order to read as follows:

§ 52.1520 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED NEW HAMPSHIRE REGULATIONS

State citation	Title/subject	State effective date	EPA approval date [1]	Explanations
*	*	*	*	*
Env-A 807	Testing and Monitoring Procedures.	October 31, 2002	November 7, 2016 [Insert **Federal Register** citation].	Approve Part Env-A 807 ''Testing for Opacity of Emissions.''
*	*	*	*	*
Env-A 2100	Particulate Matter and Visible Emissions Standards.	April 23, 2013	November 7, 2016 [Insert **Federal Register** citation].	Approve Chapter Env-A 2100, except Part Env-A 2103.03 ''Affirmative Defense to Penalty Action,'' which NH DES did not submit for approval.
*	*	*	*	*
Env-A 2400	Ferrous and Non-Ferrous Foundries, Smelters, and Investment Casting Operations.	April 23, 2013	November 7, 2016 [Insert **Federal Register** citation].	Approve Chapter Env-A 2400, except PART Env-A 2405 ''Affirmative Defenses for Violations of Visible Emission Standards,'' which NH DES did not submit for approval.
Env-A 2700	Hot Mix Asphalt Plants	February 16, 2013	November 7, 2016 [Insert **Federal Register** citation].	
*	*	*	*	*
Env-A 2800	Sand and Gravel Sources; Non-Metallic Mineral Processing Plants; Cement and Concrete Sources.	October 1, 2010	November 7, 2016 [Insert **Federal Register** citation].	
*	*	*	*	*

[1] In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

* * * * *

[FR Doc. 2016–26598 Filed 11–4–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2016–0002; Internal Agency Docket No. FEMA–8455]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by

publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA's Community Status Book (CSB). The CSB is available at *https://www.fema.gov/national-flood-insurance-program-community-status-book.*

DATES: The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact Patricia Suber, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 400 C Street SW., Washington, DC 20472, (202) 646–4149.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. FEMA has determined that the community suspension(s) included in this rule is a non-discretionary action and therefore the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) does not apply.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region II				
New York:				
Denning, Town of, Ulster County	361439	February 13, 1976, Emerg; May 25, 1984, Reg; November 18, 2016, Susp.	November 18, 2016.	November 18, 2016.
Hardenburgh, Town of, Ulster County.	361578	December 26, 1975, Emerg; July 20, 1984, Reg; November 18, 2016, Susp.	.....do	Do.
Hurley, Town of, Ulster County	360857	June 20, 1975, Emerg; July 3, 1985, Reg; November 18, 2016, Susp.	.....do	Do.
Marbletown, Town of, Ulster County	361219	September 26, 1975, Emerg; October 22, 1982, Reg; November 18, 2016, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Olive, Town of, Ulster County	360860	July 7, 1975, Emerg; November 1, 1984, Reg; November 18, 2016, Susp.	.....do	Do.
Shandaken, Town of, Ulster County	360864	December 18, 1974, Emerg; January 17, 1985, Reg; November 18, 2016, Susp.	.....do	Do.
Wawarsing, Town of, Ulster County	360867	September 15, 1975, Emerg; September 15, 1983, Reg; November 18, 2016, Susp.	.....do	Do.
Woodstock, Town of, Ulster County	360868	May 28, 1975, Emerg; September 27, 1991, Reg; November 18, 2016, Susp.	.....do	Do.
Region IV				
Tennessee:				
Franklin County, Unincorporated Areas.	470344	June 12, 1991, Emerg; January 2, 1992, Reg; November 18, 2016, Susp.	.....do	Do.
Lincoln County, Unincorporated Areas.	470104	June 3, 1991, Emerg; October 1, 1992, Reg; November 18, 2016, Susp.	.....do	Do.

*do = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: October 27, 2016.

Michael M. Grimm,

Assistant Administrator for Mitigation, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2016–26766 Filed 11–4–16; 8:45 am]

BILLING CODE 9110–12–P

Proposed Rules

Federal Register
Vol. 81, No. 215
Monday, November 7, 2016

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 56, 62, and 70

[Doc. # AMS–LPS–15–0057]

Amendments to Quality Systems Verification Programs and Conforming Changes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) proposes to amend its regulations to better reflect the current needs of Quality Systems Verification Program (QSVP) activities and to implement changes created by the merger of the AMS Livestock and Seed Program and the AMS Poultry Programs. These proposed changes include amending the Livestock, Meat, and Other Agricultural Commodities QSVP to expand the commodities under the QSVP to include those authorized under the Agricultural Marketing Act of 1946 (hereafter referred to as ''the Act''), remove reference to ''Livestock, Meat, and Other Commodities'' in the title, more clearly identify and define the types of programs and services offered under QSVP, and make other technical and administrative changes. Simultaneously, AMS proposes to make conforming changes to the regulations pertaining to the Voluntary Grading of Shell Eggs and Voluntary Grading of Poultry Products and Rabbit Products to remove references to audit activities.

DATES: Comments must be received by January 6, 2017. Pursuant to the Paperwork Reduction Act, comments on the information collection burden that would result from this rulemaking must be received by January 6, 2017.

ADDRESSES: Comments should be submitted electronically at *www.regulations.gov.* Comments received will be posted without change, including any personal information provided. All comments should reference the docket number AMS–LPS–15–0057, the date of submission, and the page number of this issue of the **Federal Register**. Comments may also be submitted to: Jeffrey Waite, Branch Chief, Auditing Services Branch, Quality Assessment Division; Livestock, Poultry, and Seed Program, Agricultural Marketing Service, U.S. Department of Agriculture; Room 3932S, STOP 0258, 1400 Independence Avenue SW.; Washington, DC 20250–0258. Comments will be made available for public inspection at the above address during regular business hours or electronically at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jeffrey Waite, Branch Chief, Auditing Services Branch, Quality Assessment Division; Livestock, Poultry, and Seed Program, Agricultural Marketing Service, U.S. Department of Agriculture; Room 3932S, STOP 0258, 1400 Independence Avenue SW; Washington, DC 20250–0258; telephone (202) 720–4411; or email to *jeffrey.waite@ams.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 13563

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, reducing costs, harmonizing rules, and promoting flexibility. This rulemaking has been determined to be not significant for purposes of Executive Order 12866 or Executive Order 13563. Accordingly, the Office of Management and Budget (OMB) has waived the review process.

Executive Order 13175

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this proposed regulation would not have substantial and direct effects on Tribal governments and would not have significant Tribal implications.

Regulatory Flexibility Act

AMS has determined that this proposed rule will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), because the services are voluntary and provided on a fee-for-service basis and are not subject to scalability based on the business size. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so small businesses will not be unduly or disproportionately burdened. As such, these changes will not impose a significant impact on applicants requesting service under the program.

Currently, approximately 950 applicants subscribe to AMS' voluntary, fee-for-services that are subject to the requirements of this regulation. The U.S. Small Business Administration's Table of Small Business Size Standards matched to the North American Industry Classification System Codes identifies small business size by average annual receipts or by the average number of employees at a firm. This information can be found in the CFR at 13 CFR parts 121.104, 121.106, and 121.201.

AMS requires that all applicants for service provide information about their company for the purpose of processing bills. Information collected from an applicant includes company name, address, billing address, and similar information. AMS does not collect information about the size of the business. However, based on working knowledge of these operations, AMS estimates that roughly 25 percent of current applicants may be classified as small entities. It is not anticipated that this action would impose additional costs to applicants, regardless of size. Current applicants will not be required to provide any additional information to receive service. The effects of this proposed rule are not expected to be disproportionately greater or less for small applicants than for larger applications. As described above, these are voluntary, fee-for-service activities.

AMS is committed to complying with the E-Government Act of 2002 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.

USDA has not identified any relevant federal rules that duplicate, overlap, or conflict with this rulemaking.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this proposed rule will not change the information collection and recordkeeping requirements previously approved, and will not impose additional reporting or recordkeeping burden on users of these voluntary services; however, the overall reporting and recordkeeping burden would increase due to the anticipated increase in number of respondents.

The information collection and recordkeeping requirements of this part have been approved by OMB under 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0581–0128.

In September 2014, three separate OMB collections—OMB 0581–0127, OMB 0581–0124, and OMB 0581–0128—were merged, such that the current OMB 0581–0128 pertains to Regulations for Voluntary Grading, Certification, and Standards and includes 7 CFR parts 54, 56, 62, and 70.

In the past fiscal year, AMS' Livestock, Poultry, and Seed Program (LPS) has received approximately 50 inquiries related to the verification of non-genetically engineered products. Of these inquiries, 72 percent identified with industries outside the scope of LPS commodities, including the manufacture of dairy, fruits, vegetables, grains, wood products, and food and feed supplements; 8 percent identified with current industries serviced by LPS (meat and poultry manufacturing or processing, laboratories, feed manufactures); and 20 percent were identified as a service provider or an association not directly related to a service category. AMS does not expect the last group to submit an application for service; thus, the group was not included as a potential applicant.

USDA has considered the reporting and recordkeeping burden on applicants under this program. Currently, applicants are required to complete an application for service and submit documentation. Recordkeeping requirements would remain the same, though the overall burden is expected to increase due to an increase in applications. As previously stated, of approximately 50 inquiries for an existing service received by LPS, approximately three-fourths of these inquiries represented new commodities, which could potentially increase the overall reporting and recordkeeping burden. Accordingly, if the proposed rule is adopted, and if two-thirds of the inquirers seek service, then LPS estimates the number of respondents will increase by 25, thereby increasing the overall reporting and recordkeeping burden by 602.50 hours, from 1205.80 hours to 1808.30 hours annually.

Since this action proposes to expand the scope of covered commodities, which is expected to increase the number of respondents, the already approved OMB 0158–0128 must be revised to reflect the increased reporting and recordkeeping burden. Therefore, AMS will submit a Justification for Change to OMB for approval to increase these burden hours to OMB number 0158–0128.

A 60-day comment period is provided to allow interested persons an opportunity to respond to this proposal. All written comments received will be considered before a final determination is made on this matter.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is not intended to have retroactive effect. The Act prohibits States or political subdivisions of a State to impose any requirement that is in addition to, or inconsistent with, any requirement of the Act. There are no civil justice implications associated with this proposed rule.

Civil Rights Review

AMS has considered the potential civil rights implications of this proposed rule on minorities, women, or persons with disabilities to ensure that no person or group shall be discriminated against on the basis of race, color, national origin, gender, religion, age, disability, sexual orientation, marital or family status, political beliefs, parental status, or protected genetic information. This proposed rule does not require affected entities to relocate or alter their operations in ways that could adversely affect such persons or groups. Further, this proposed rule will not deny any persons or groups the benefits of the program or subject any persons or groups to discrimination.

Executive Order 13132

This proposed rule has been reviewed under Executive Order 13132, Federalism. This Order directs agencies to construe, in regulations and otherwise, a federal statute to preempt State law only when the statute contains an express preemption provision. There are no federalism implications associated with this proposed rule.

Background and Proposed Revisions

The Act directs and authorizes the Secretary of Agriculture to facilitate the competitive and efficient marketing of agricultural products. AMS programs support a strategic marketing perspective that adapts product and marketing decisions to consumer demands, changing domestic and international marketing practices, and new technology. AMS provides impartial verification services that ensure agricultural products meet specified requirements. These services include AMS' grading program, which verifies that product meets USDA grade standards. In addition, AMS provides direct certification of products in the facilities that manufacture them. Product characteristics such as manner of cut, color, and other attributes can be directly examined by an AMS employee to determine if a specification has been met, and the product can be stamped and marketed as ''USDA Certified'' or ''USDA Accepted as Specified.'' These services are voluntary, with users paying for the cost of the requested service.

Over time, industry began to request AMS verification of factors that were not apparent through an examination of the livestock or products at a processing facility. Industry desired the ability to market factors related to raising of the livestock, such as feeding regimen, in relation to the resulting products, and to do so with assurance to their customers.

To accommodate these requests for verification, AMS began conducting audits of livestock production facilities as a part of its third-party verification services. Ultimately, in 2001, AMS developed the QSVP, a suite of audit-based programs that can provide confidence that process points, such as livestock feeding regimen, are being adhered to at the farm or ranch before the livestock are processed and enter commerce as a meat product with an associated marketing claim.

The USDA Process Verified Program (PVP) is one program under QSVP. PVP provides producers and marketers of livestock, seed products, and poultry products a way to assure customers of their ability to provide consistent quality products by having written production and manufacturing processes confirmed through independent, third-party audits. Under PVP, companies outline their own specific requirements, and AMS ensures adherence to those processes via routine audits. This is in contrast to other QSVP services offered by AMS, such as the Quality Systems Assessment Program (QSA), which have program

requirements outlined by AMS or a party other than the producers or marketer. For example, most of AMS' QSVP audit activities fall under the category of Export Verification activities, which are based on government-to-government agreements with international trading partners regarding specific foreign market requirements.

Several factors triggered AMS' review of the regulations describing QSVP activities. First, an organizational merger in 2013 combined the Livestock and Seed Program and Poultry Programs to create the Livestock, Poultry, and Seed (LPS) Program within AMS. Prior to the merger, both Programs administered parallel QSVP services to their respective industries. These activities were carried out under 7 CFR part 62 for livestock, meat, and related commodities and under 7 CFR part 56 and 7 CFR part 70 for shell eggs and poultry industries, respectively.

Currently, all QSVP services are delivered by the same management unit and operate by the same procedures (*e.g.,* application process and audit process), and audits are in large measure conducted by the same personnel. Therefore, AMS proposes to remove any references to audit and verification activities contained in 7 CFR parts 56 and 70 and incorporate the commodities currently covered in those parts (*i.e.,* shell eggs and poultry) into 7 CFR part 62.

Because 7 CFR part 62 accurately describes the process by which these services are provided, AMS is proposing to amend the definition of *products* describing the commodities covered under voluntary QSVP services to include products authorized by the Act. Rather than limiting the product type to an individual program within AMS, AMS believes it is more appropriate to expand the definition of products to efficiently manage the QSVP, including the PVP. AMS seeks to maintain uniformity, transparency, and efficiency of service delivery of the QSVP, including the PVP. Without expanding the definition of *products,* AMS would be required to establish and maintain duplicate programs in each commodity area that would essentially carry out the same functions in regard to delivering the QSVP, including the PVP.

Other changes proposed are administrative in nature. For example, because AMS is proposing to expand the scope of commodities that companies can voluntary have verified by AMS under a QSVP, AMS is also proposing to amend the title of the regulations to remove limiting references to ''livestock and meat.'' Additionally, the USDA Office of the Inspector General (OIG) completed an audit in 2015 of the PVP and recommended that AMS take additional steps to unify the program, as it was delivered under the same heading.

Additional administrative changes are necessary to reflect the current terminology and organizational structure of AMS. These amendments include changing the name of the Program to reflect the merger of the Livestock and Seed Program and Poultry Programs into the Livestock, Poultry, and Seed Program. Subsequently, LPS' Quality Assessment Division was created to oversee the Audit Services Branch, Grading Services Branch, and Standardization Branch. The Audit Services Branch replaced the Audit, Review, and Compliance Branch of the Livestock and Seed Program and incorporated auditing services that were part of the Grading Branch of Poultry Programs. Certain managerial titles were also updated with the merger: a Director was established, along with an Audit Services Branch Chief.

List of Subjects

7 CFR Part 56

Grading of shell eggs, Inspections, Marketing practices, Standards.

7 CFR Part 62

Inspections, Marketing practices, Quality Systems Verification, Standards.

7 CFR Part 70

Inspections, Marketing practices, Standards, Voluntary Grading of Poultry Products and Rabbit Products.

For the reasons set forth in the preamble, AMS proposes to amend 7 CFR parts 56, 62, and 70 as follows:

PART 56—VOLUNTARY GRADING OF SHELL EGGS

■ 1. The authority citation for 7 CFR part 56 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

■ 2. Amend § 56.1 by:

■ a. Removing the paragraph containing the term and definition for *Auditing services;*

■ b. Adding in alphabetical order definitions for *Branch* and *Chief;*

■ c. Removing the definition for *Chief of the Grading Branch;*

■ d. Adding in alphabetical order a definition for *Division;* and

■ e. Revising the definitions of *Official standards, United States Standards for Quality of Individual Shell Eggs,* and *United States Standards, Grades, and Weight Classes for Shell Eggs (AMS 56).*

The additions and revisions read as follows:

§ 56.1 Meaning of words and terms defined.

* * * * *

Branch means the Grading Services Branch for the Quality Assessment Division.

* * * * *

Chief means the Chief of the Grading Services Branch for the Quality Assessment Division.

* * * * *

Division means the Quality Assessment Division of the Livestock, Poultry, and Seed Program.

* * * * *

Official standards means the official U.S. standards grades, and weight classes for shell eggs maintained by and available from the Livestock, Poultry, and Seed Program.

* * * * *

United States Standards for Quality of Individual Shell Eggs means the official U.S. Standards, Grades, and Weight Classes for Shell Eggs (AMS 56) that are maintained by and available from the Livestock, Poultry, and Seed Program.

* * * * *

United States Standards, Grades, and Weight Classes for Shell Eggs (AMS 56) means the official U.S. standards, grades, and weight classes for shell eggs that are maintained by and available from the Livestock, Poultry, and Seed Program.

* * * * *

§ 56.28 [Amended]

■ 3. Amend § 56.28 by removing paragraph (d).

■ 4. Amend § 56.46 by revising paragraph (a), revising paragraphs (b)(1)(i) through (iii), and removing paragraph (d).

The revisions read as follows:

§ 56.46 On a fee basis.

(a) Unless otherwise provided in this part, the fees to be charged and collected for any service performed, in accordance with this part, on a fee basis shall be based on the applicable formulas specified in this section. For each calendar year or crop year, AMS will calculate the rate for grading services, per hour per program employee using the following formulas:

(1) *Regular rate.* The total AMS grading personnel direct pay divided by direct hours, which is then multiplied by the next year's percentage of cost of living increase, plus the benefits rate, plus the operating rate, plus the allowance for bad debt rate. If applicable, travel expenses may also be added to the cost of providing the service.

(2) *Overtime rate.* The total AMS grading personnel direct pay divided by direct hours, which is then multiplied by the next year's percentage of cost of living increase and then multiplied by 1.5 plus the benefits rate, plus the

operating rate, plus an allowance for bad debt. If applicable, travel expenses may also be added to the cost of providing the service.

(3) *Holiday rate.* The total AMS grading personnel direct pay divided by direct hours which is then multiplied by the next year's percentage of cost of living increase and then multiplied by 2, plus benefits rate, plus the operating rate, plus an allowance for bad debt. If applicable, travel expenses may also be added to the cost of providing the service.

(b)(1) * * *

(i) *Benefits rate.* The total AMS grading direct benefits costs divided by the total hours (regular, overtime, and holiday) worked, which is then multiplied by the next calendar year's percentage cost of living increase. Some examples of direct benefits are health insurance, retirement, life insurance, and Thrift Savings Plan (TSP) retirement basic and matching contributions.

(ii) *Operating rate.* The total AMS grading operating costs divided by total hours (regular, overtime, and holiday) worked, which is then multiplied by the percentage of inflation.

(iii) *Allowance for bad debt rate.* Total AMS grading allowance for bad debt divided by total hours (regular, overtime, and holiday) worked.

* * * * *

■ 5. Amend § 56.61 by revising paragraph (b) to read as follows:

§ 56.61 Where to file an appeal.

* * * * *

(b) All other appeal requests. Any interested party who is not satisfied with the determination of the class, quality, quantity, or condition of product which has left the official plant where it was graded or which was graded other than in an official plant may request an appeal grading by filing such request with the regional director in the area where the product is located or with the Chief.

■ 6. Amend § 56.64 by revising paragraph (c) to read as follows:

§ 56.64 Who shall perform the appeal.

* * * * *

(c) Whenever practical, an appeal grading shall be conducted jointly by two graders. The assignment of the grader(s) who will make the appeal grading requested under § 56.61(b) shall be made by the regional director or the Chief.

PART 62—QUALITY SYSTEMS VERIFICATION PROGRAMS

■ 7. The authority citation for 7 CFR part 62 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

■ 8. Amend part 62 by revising the heading to read as set forth above and revising all references to ''Livestock and Seed Program'' to read ''Livestock, Poultry, and Seed Program,'' and revise all references to ''LS Program'' to read ''LPS Program'' wherever they occur.

Subpart A—Quality Systems Verification Programs

■ 9. Amend part 62 by revising the heading to Subpart A to read as set forth above.

■ 10. Amend § 62.000 by:

■ a. Removing the definitions for *Branch* and *Chief;*

■ b. Revising the definition of Conformance;

■ c. Adding in alphabetical order definitions for *Division* and *Division Director;*

■ d. Removing the definition of *Livestock;* and

■ e. Revising the definitions for *Products, QSVP Procedures,* and *Quality Systems Verification Programs (QSVP).*

The revisions and additions read as follows:

§ 62.000 Meaning of terms.

* * * * *

Conformance. The fulfillment of criteria or a requirement.

* * * * *

Division. The Quality Assessment Division (QAD) of the Livestock, Poultry, and Seed Program.

Division Director. The Director of QAD, or any officer or employee of the Livestock, Poultry, and Seed Program to whom authority has been delegated, or to whom authority may be delegated, to act in the Director's stead.

* * * * *

Products. All agricultural commodities and services within the scope of the Agricultural Marketing Act of 1946, *et seq.*

QSVP Procedures. The requirements and guidelines set forth by the Agricultural Marketing Service regarding the development, documentation, and implementation of QSVP.

* * * * *

Quality System Verification Programs (QSVP). A collection of voluntary, audit-based, user-fee programs that allow applicants to have program documentation and program processes assessed by an AMS auditor.

* * * * *

§ 62.200 [Amended]

■ 11. Amend § 62.200 by removing paragraph (b).

■ 12. Revise § 62.202 to read as follows:

§ 62.202 How to apply for service.

Applicants may apply for QSVP services by submitting the following information to the QAD office by email to *QAD.Auditservice@ams.usda.gov* or by mail to: USDA, AMS, LPS, QAD, 1400 Independence Avenue SW., STOP 0258, Washington, DC 20250–0258.

(a) A completed LPS–109, Application for Service;

(b) A letter requesting QSVP services; and

(c) A complete copy of the applicant's program documentation, as described in the QSVP procedures.

■ 13. Revise § 62.203 to read as follows:

§ 62.203 How to withdraw service.

Service may be withdrawn by the applicant at any time, provided that the applicant notifies QAD in writing of his/her desire to withdraw the application for service and pays any expenses the Department has incurred in connection with such application.

■ 14. Amend § 62.207 by revising paragraphs (b) and (c) to read as follows:

§ 62.207 Official assessment.

* * * * *

(b) *Program assessment.* Auditors and USDA officials shall conduct an on-site assessment of the applicant's program to ensure provisions of the applicant's program documentation have been implemented and conform to QSVP procedures.

(c) *Program determination.* Applicants determined to meet or not meet QSVP procedures or the applicant's program requirements shall be notified of their program's approval or disapproval.

* * * * *

■ 15. Amend § 62.208 by revising the introductory text and paragraphs (a), (b), and (e) to read as follows:

§ 62.208 Publication of QSVP assessment status.

Approved programs shall be posted for public reference on the agency Web site. Such postings shall include:

(a) Applicant name and contact information; and

(b) Products, services, process points, or standards included in the scope of approval.

* * * * *

(e) Any other information deemed necessary by the Director.

■ 16. Revise § 62.209 to read as follows:

§ 62.209 Reassessment.

Approved programs are subject to periodic reassessments to ensure ongoing conformance with LPS QSVP procedures covered under the scope of approval. The frequency of reassessments shall be based on LPS QSVP procedures, or as determined by the Director.

■ 17. Amend § 62.210 by revising paragraph (b) introductory text, (b)(5), and (c) to read as follows:

§ 62.210 Denial, suspension, or cancellation of service.

* * * * *

(b) QSVP services may be suspended if the applicant fails to maintain its program requirements, or conform to LPS Program QSVP procedures; such as failure to:

* * * * *

(5) Submit significant changes to an approved program and seek approval from the Program Manager or Program Review Committee, as appropriate, prior to implementation of significant changes to an approved program;

* * * * *

(c) QSVP services may be cancelled, an application may be rejected, or program assessment may be terminated if the Director or his designee determines that a nonconformance has remained uncorrected beyond a reasonable amount of time.

■ 18. In § 62.211, revise the introductory text and paragraph (a) to read as follows:

§ 62.211 Appeals.

Appeals of adverse decisions under this part, may be made in writing to the Director at 1400 Independence Avenue SW.; Room 3932–S, STOP 0258; Washington, DC 20250–0201. Appeals must be made within 30 days of receipt of adverse decision.

(a) *Procedure for appeals.* Actions under this paragraph concerning decision of appeals of the Director shall be conducted in accordance with the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary under various statutes set forth at 7 CFR 1.130 through 1.151 and the Supplemental Rules of Practice in 7 CFR part 50.

* * * * *

■ 19. Revise § 62.213 to read as follows:

§ 62.213 Official identification.

The following, as shown in Figure 1, constitutes official identification to show product or services produced under an approved USDA Process Verified Program (PVP):

(a) Products or services produced under an approved USDA PVP may use the ''USDA Process Verified'' statement and the ''USDA Process Verified'' shield, so long as each is used in direct association with a clear description of the process verified points approved by the Division.

(b) The USDA Process Verified shield must replicate the form and design of the example in Figure 1 and must be printed legibly and conspicuously:

(1) On a white background with a gold trimmed shield, with the term ''USDA'' in white overlaying a blue upper third of the shield, the term ''PROCESS'' in black overlaying a white middle third of the shield, and term ''VERIFIED'' in white overlaying a red lower third of the shield.

(2) On a white or transparent background with a black trimmed shield, with the term ''USDA'' in white overlaying a black upper third of the shield, the term ''PROCESS'' in black overlaying a white middle third of the shield, and the term ''VERIFIED'' in white overlaying a black lower third of the shield.

(c) Use of the ''USDA Process Verified'' statement and the ''USDA Process Verified'' shield shall be approved in writing by the Director prior to use by an applicant.

■ 20. Amend § 62.300 by revising paragraph (e) to read as follows:

§ 62.300 Fees and other costs of service.

* * * * *

(e) *Other costs.* When costs, other than those costs specified in paragraphs (a) through (c) of this section, are involved in providing the QSVP services, the applicant shall be responsible for these costs. The amount of these costs shall be determined administratively by the Division. However, the applicant will be notified of these costs before the service is rendered.

■ 21. Revise § 62.400 to read as follows:

§ 62.400 OMB control number assigned pursuant to the Paperwork Reduction Act.

The information collection and recordkeeping requirements of this part have been approved by OMB under 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0581–0128.

PART 70—VOLUNTARY GRADING OF POULTRY PRODUCTS AND RABBIT PRODUCTS

■ 22. The authority citation for part 70 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

■ 23. Amend § 70.1 by:
■ a. Removing the definition for *Auditing services;*
■ b. Adding in alphabetical order definitions for *Branch* and *Chief;*
■ c. Removing the definition of *Chief of the Grading Branch;* and
■ d. Adding in alphabetical order a definition for *Division.*

The additions read as follows:

§ 70.1 Definitions.

* * * * *

Branch means the Grading Services Branch for the Quality Assessment Division.

* * * * *

Chief means the Chief of the Grading Services Branch for the Quality Assessment Division.

Division means the Quality Assessment Division of the Livestock, Poultry, and Seed Program, AMS.

* * * * *

§ 70.4 [Amended]

■ 24. Amend § 70.4 by removing paragraph (c).

■ 25. Amend § 70.6 by revising paragraph (a) to read as follows:

§ 70.6 OMB control number.

(a) *Purpose.* The collecting of information requirements in this part has been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0581–0128.

* * * * *

■ 26. Amend § 70.71 by revising the introductory text and paragraphs (a) and (b)(1)(i) through (iii) and by removing paragraph (d).

The revisions read as follows:

§ 70.71 On a fee basis.

* * * * *

(a) For each calendar year, AMS will calculate the rate for grading services, per hour per program employee using the following formulas:

(1) *Regular rate.* The total AMS grading personnel direct pay divided by direct hours, which is then multiplied by the next year's percentage of cost of living increase, plus the benefits rate, plus the operating rate, plus the allowance for bad debt rate. If applicable, travel expenses may also be

added to the cost of providing the service.

(2) *Overtime rate.* The total AMS grading personnel direct pay divided by direct hours, which is then multiplied by the next year's percentage of cost of living increase and then multiplied by 1.5 plus the benefits rate, plus the operating rate, plus an allowance for bad debt. If applicable, travel expenses may also be added to the cost of providing the service.

(3) *Holiday rate.* The total AMS grading personnel direct pay divided by direct hours, which is then multiplied by the next year's percentage of cost of living increase and then multiplied by 2, plus benefits rate, plus the operating rate, plus an allowance for bad debt. If applicable, travel expenses may also be added to the cost of providing the service.

(b)(1) * * *

(i) *Benefits rate.* The total AMS grading direct benefits costs divided by the total hours (regular, overtime, and holiday) worked, which is then multiplied by the next calendar year's percentage cost of living increase. Some examples of direct benefits are health insurance, retirement, life insurance, and Thrift Savings Plan (TSP) retirement basic and matching contributions.

(ii) *Operating rate.* AMS' grading total operating costs divided by total hours (regular, overtime, and holiday) worked, which is then multiplied by the percentage of inflation.

(iii) *Allowance for bad debt rate.* Total AMS grading allowance for bad debt divided by total hours (regular, overtime, and holiday) worked.

* * * * *

■ 27. Amend § 70.101 by revising paragraph (b) to read as follows:

§ 70.101 Where to file an appeal.

* * * * *

(b) *All other appeal requests.* Any interested party who is not satisfied with the determination of the class, quality, quantity, or condition of product which has left the official plant where it was graded, or which was graded other than in an official plant, may request an appeal grading by filing such request with the regional director in the area where the product is located or with the Chief.

■ 28. Amend § 70.104 by revising paragraph (c) to read as follows:

§ 70.104 Who shall perform the appeal.

* * * * *

(c) Whenever practical, an appeal grading shall be conducted jointly by two graders. The assignment of the grader(s) who will make the appeal grading requested under § 70.101(b) shall be made by the regional director or the Chief.

Dated: October 19, 2016.

Elanor Starmer,

Administrator, Agricultural Marketing Service.

[FR Doc. 2016–25690 Filed 11–4–16; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

[NRC–2016–0145]

RIN 3150–AJ79

Role of Third Parties in Access Authorization and Fitness-for-Duty Determinations

AGENCY: Nuclear Regulatory Commission.

ACTION: Public meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) plans to hold a public meeting to discuss a rulemaking activity regarding the role of third parties in access authorization and fitness-for-duty determinations. The purpose of the meeting is to provide information on the background and status of this rulemaking activity and to obtain input from interested stakeholders.

DATES: The public meeting will be held on November 16, 2016. See Section II, Public Meeting, of this document for more information on the meeting.

ADDRESSES: Please refer to Docket ID NRC–2016–0145 when contacting the NRC about the availability of information regarding this meeting. You may obtain publicly-available information related to this meeting using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0145. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Daniel I. Doyle, Office of Nuclear Reactor Regulation, telephone: 301–415–3748, email: *Daniel.Doyle@nrc.gov;* or Mark Resner, Office of Nuclear Security and Incident Response, telephone: 301–287–3680, email: *Mark.Resner@nrc.gov.* Both are staff members of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Background

On June 6, 2016, the Commission approved an NRC staff recommendation to proceed with the rulemaking process to further explore the issues raised in an NRC staff paper regarding the role of third party arbitrators in licensee access authorization and fitness-for-duty determinations (ADAMS Accession No. ML16158A286). The NRC is in the early stages of developing a regulatory basis document that will describe the regulatory issue, options to address the issue, and the recommended option. The NRC will consider the information shared at the meeting in the development of the regulatory basis document.

II. Public Meeting

The public meeting will be on November 16, 2016, from 1:00 p.m. to 4:00 p.m. (EST) in the Commission Hearing Room, 11555 Rockville Pike, Rockville, Maryland 20852. Interested stakeholders may attend in person or via teleconference and Webinar. The purpose of the meeting is to provide background information on this rulemaking activity and obtain stakeholder input in order to enhance the NRC's understanding of the associated issues. Further, the staff will address the various opportunities for the public to participate in the rulemaking process. The NRC will not provide formal written responses to the oral comments made at this meeting. In addition, the NRC is not providing an opportunity to submit written public comments in connection with this meeting.

Information for the teleconference and Webinar is available in the meeting notice, which can be accessed through

the NRC's public Web site at: *http://meetings.nrc.gov/pmns/mtg.* Participants must register at the Internet link in the meeting notice to participate in the Webinar.

Additional details regarding the meeting will be posted at least 10 days prior to the public meeting on the NRC's public meeting Web site at: *http://meetings.nrc.gov/pmns/mtg.*

Dated at Rockville, Maryland, this 31st day of October 2016.

For the Nuclear Regulatory Commission.

Louise Lund,

Director, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. 2016–26825 Filed 11–4–16; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 22

[Docket ID OCC–2016–0005]

RIN 1557–AD67

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Docket No. R–1549]

RIN 7100–AE60

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 339

RIN 3064–AE50

FARM CREDIT ADMINISTRATION

12 CFR Part 614

RIN 3052–AD11

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 760

RIN 3133–AE64

Loans in Areas Having Special Flood Hazards—Private Flood Insurance

AGENCY: Office of the Comptroller of the Currency; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; Farm Credit Administration; National Credit Union Administration.

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), the Farm Credit Administration (FCA), and the National Credit Union Administration (NCUA) are issuing a new proposal to amend their regulations regarding loans in areas having special flood hazards to implement the private flood insurance provisions of the Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters Act). Specifically, the proposed rule would require regulated lending institutions to accept policies that meet the statutory definition of private flood insurance in the Biggert-Waters Act and permit regulated lending institutions to accept flood insurance provided by private insurers that does not meet the statutory definition of ''private flood insurance'' on a discretionary basis, subject to certain restrictions.

DATES: Comments must be received on or before January 6, 2017.

ADDRESSES: *OCC:* Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments through the Federal eRulemaking Portal or email, if possible. Please use the title ''Loans in Areas Having Special Flood Hazards—Private Flood Insurance'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—''Regulations.gov'':* Go to *www.regulations.gov.* Enter ''Docket ID OCC–2016–0005'' in the Search Box and click ''Search.'' Click on ''Comment Now'' to submit public comments.
- Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*, including instructions for submitting public comments.
- *Email: regs.comments@occ.treas.gov.*
- *Mail:* Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2016–0005'' in your comment. In general, the OCC will enter all comments received into the docket and publish them on the *Regulations.gov* Web site without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

- *Viewing Comments Electronically:* Go to *www.regulations.gov.* Enter ''Docket ID OCC–2016–0005'' in the Search box and click ''Search.'' Click on ''Open Docket Folder'' on the right side of the screen and then ''Comments.'' Comments can be filtered by clicking on ''View All'' and then using the filtering tools on the left side of the screen.
- Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*. Supporting materials may be viewed by clicking on ''Open Docket Folder'' and then clicking on ''Supporting Documents.'' The docket may be viewed after the close of the comment period in the same manner as during the comment period.
- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

Board: You may submit comments, identified by Docket No. R–1549 or RIN 7100 AE 60, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Address to Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments will be made available on the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets NW.) between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC: You may submit comments by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Agency Web site: http://www.fdic.gov/regulations/laws/federal/propose.html.*
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivered/Courier:* The guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.
- *Email: comments@FDIC.gov.*

Comments submitted must include ''FDIC'' and ''Loans in Areas Having Special Flood Hazards—Private Flood Insurance.'' Comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html,* including any personal information provided.

FCA: We offer a variety of methods for you to submit your comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by email or through the FCA's Web site. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we are no longer accepting comments submitted by fax. Regardless of the method you use, please do not submit your comments multiple times via different methods. You may submit comments by any of the following methods:

- *Email:* Send us an email at *reg-comm@fca.gov.*
- *Agency Web site: http://www.fca.gov.* Select ''Law & Regulations,'' then ''FCA Regulations,'' then ''Public Comments,'' and follow the directions for ''Submitting a Comment.''
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Barry F. Mardock, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

You may review copies of all comments we receive at our office in McLean, Virginia or on our Web site at *http://www.fca.gov.* Once you are in the Web site, select ''Law & Regulations,'' then ''FCA Regulations,'' then ''Public Comments,'' and follow the directions for ''Reading Submitted Public Comments.'' We will show your comments as submitted, including any supporting data provided, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove email addresses to help reduce Internet spam.

NCUA: You may submit comments, identified by RIN 3133–AE64 by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Agency Web site: http://www.ncua.gov.* Follow the instructions for submitting comments.
- *Email:* Address to *regcomments@ncua.gov.* Include [Your name] Comments on ''Loans in Areas Having Special Flood Hazards—Private Flood Insurance'' in the email subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for email.
- *Mail:* Address to Gerard S. Poliquin, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.
- All public comments are available on the agency's Web site at *http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx* as submitted, except when not possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA's law library at 1775 Duke Street, Alexandria, VA 22314, by appointment weekdays between 9:00 a.m. and 3:00 p.m. To make an appointment, call (703) 518–6546 or send an email to *OGCMail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT:

OCC: Rhonda L. Daniels, Compliance Specialist, Compliance Policy Division, (202) 649–5405; Margaret C. Hesse, Senior Counsel, Community and Consumer Law Division, (202) 649–6350; or Heidi M. Thomas, Special Counsel, or Melissa Lisenbee, Attorney, Legislative and Regulatory Activities Division, (202) 649–5490, or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597.

Board: Lanette Meister, Senior Supervisory Consumer Financial Services Analyst (202) 452–2705; Vivian W. Wong, Senior Counsel (202) 452–3667, Division of Consumer and Community Affairs; or Daniel Ericson, Counsel (202) 452–3359, Legal Division; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

FDIC: Navid Choudhury, Counsel, Consumer Compliance Unit, Legal Division, (202) 898–6526; or John Jackwood, Senior Policy Analyst, Division of Depositor and Consumer Protection, (202) 898–3991.

FCA: Paul K. Gibbs, Associate Director, Office of Regulatory Policy (703) 883–4203, TTY (703) 883–4056; or Mary Alice Donner, Senior Counsel, Office of General Counsel (703) 883–4020, TTY (703) 883–4056.

NCUA: Sarah Chung, Staff Attorney, Office of General Counsel, (703) 518–6540, or Judy Graham, Program Officer, Office of Examination and Insurance, (703) 518–6392.

SUPPLEMENTARY INFORMATION:

I. Background

A. Flood Insurance Statutes

The National Flood Insurance Act of 1968 (1968 Act) [1] and the Flood Disaster Protection Act of 1973 (FDPA),[2] as amended, (collectively referenced herein as the Federal flood insurance statutes) govern the National Flood Insurance Program (NFIP).[3] These laws make Federally subsidized flood insurance available to owners of improved real estate or mobile homes located in participating communities and require the purchase of flood insurance in connection with a loan made by a regulated lending institution [4] when the loan is secured by improved real estate or a mobile home located in special flood hazard areas (SFHA) in which flood insurance is available under the NFIP.[5] The OCC,

[1] Public Law 90–448, 82 Stat. 572 (1968).

[2] Public Law 93–234, 87 Stat. 975 (1973).

[3] These statutes are codified at 42 U.S.C. 4001–4129. The Federal Emergency Management Agency (FEMA) administers the NFIP; its regulations implementing the NFIP appear at 44 CFR parts 59–77.

[4] The FDPA defines ''regulated lending institution'' to mean any bank, savings and loan association, credit union, farm credit bank, Federal land bank association, production credit association, or similar institution subject to the supervision of a Federal entity for lending regulation. 42 U.S.C. 4003(a)(1).

[5] An SFHA is an area within a flood plain having a one percent or greater chance of flood occurrence in any given year. 44 CFR 59.1. SFHAs are

Board, FDIC, FCA, and NCUA (collectively, the Agencies) each have issued regulations implementing these statutory requirements for the lending institutions they supervise.[6] The Biggert-Waters Act[7] amended the NFIP requirements that the Agencies have authority to implement and enforce. Among other things, the Biggert-Waters Act: (1) Required the Agencies to issue a rule regarding the escrow of premiums and fees for flood insurance;[8] (2) clarified the requirement to force place insurance;[9] and (3) required the Agencies to issue a rule to direct regulated lending institutions to accept ''private flood insurance,'' as defined by the Biggert-Waters Act, and to notify borrowers of the availability of private flood insurance.[10]

B. Regulatory History

In October 2013, the Agencies jointly issued proposed rules to implement the escrow, force placement, and private flood insurance provisions of the Biggert-Waters Act (the October 2013 Proposed Rule).[11] In March 2014, the Homeowner Flood Insurance Affordability Act (HFIAA)[12] was enacted, which, among other things, amended the Biggert-Waters Act requirements regarding the escrow of flood insurance premiums and fees and created a new exemption from the mandatory flood insurance purchase requirements for certain detached structures. Accordingly, the Agencies jointly issued a new proposed rule in October 2014 to implement the new escrow and detached structure provisions.[13] In July 2015, the Agencies jointly issued final rules to implement the escrow and detached structure provisions of HFIAA and the force-placed flood insurance provisions of the Biggert-Waters Act.[14] Based on comments received in response to the October 2013 Proposed Rule, and the statutory effective date for the escrow provisions, the Agencies decided to finalize the escrow and force-placed insurance provisions and to revise and re-propose the private flood insurance provisions.

The October 2013 Proposed Rule would have required a regulated lending institution to accept all coverage meeting the statutory definition of ''private flood insurance'' in the Biggert-Waters Act. The Agencies requested comment on various issues related to this requirement. In particular, the Agencies sought comment on the inclusion of a safe harbor that would allow lenders to rely on the expertise of State insurance regulators to determine whether a policy meets the definition of private flood insurance and must be accepted by a lender. Additionally, the Agencies asked whether the rule should include a provision expressly permitting regulated lending institutions to accept, at their discretion, flood insurance provided by private insurers that does not meet the Biggert-Waters Act's definition of private flood insurance (discretionary acceptance). The Agencies also solicited comment on what criteria the Agencies might require for such a policy.

The Agencies received 81 written comments on the October 2013 Proposed Rule, including 51 comments addressing some aspect of private flood insurance. These commenters addressed specific issues, such as: The regulatory definition of ''private flood insurance,'' the use of a regulatory safe harbor to facilitate compliance by regulated lending institutions, whether private flood insurance that does not conform to the statutory definition of the term should be accepted by regulated lending institutions, whether alternative criteria for such non-conforming private flood insurance should be developed by the Agencies, and whether regulated lending institutions should be permitted to accept certain non-traditional, non-conforming flood insurance coverage, such as Amish Aid plans.

This proposal addresses the private flood insurance provisions of the Biggert-Waters Act.[15] The preamble discusses comments received in response to the October 2013 Proposed Rule, as appropriate, in the section-by section analysis, below.

II. Section-by-Section Analysis

A. Definitions

Mutual aid society. As discussed below, the Agencies are proposing a provision that would permit regulated lending institutions to accept, at their discretion and under certain circumstances, a flood insurance policy issued by a private insurer that does not meet the definition of ''private flood insurance'' in the Biggert-Waters Act. This provision includes specific standards for the acceptance of flood policies issued by mutual aid societies. In connection with this provision, the Agencies are proposing to add a definition of ''mutual aid society'' to their rules. Under the proposed definition, to qualify as a mutual aid society, an organization would need to meet three criteria: (1) The members must share a common religious, charitable, educational, or fraternal bond; (2) the organization must cover losses caused by damage to members' property including damage caused by flooding, pursuant to an agreement, in accordance with this common bond; and (3) the organization must have a demonstrated history of fulfilling the terms of agreements to cover losses to members' property caused by flooding. This proposed definition would ensure that only established organizations that consist of members with similar delineated goals or purposes, that have agreed to cover damage caused by flooding, and that have adequately covered flood losses in the past could be considered a ''mutual aid society.''

The Agencies request specific comment on whether the terms of this proposed definition adequately cover the types of organizations that should be considered ''mutual aid societies'' for purposes of the discretionary acceptance provision in this proposed rule. Specifically, the Agencies request comment on whether the proposed criteria are too broad or too narrow, and, if so, whether the final rule should include alternative, or additional, criteria.

Private flood insurance. The proposed rule would amend the Definitions section to include the definition of ''private flood insurance'' specified in section 100239 of the Biggert-Waters Act, which added a new section 102(b)(7) to the FDPA. The proposed rule would define ''private flood insurance'' consistent with the statutory definition, with some clarifying edits, to mean an insurance policy that:

1. Is issued by an insurance company that is licensed, admitted, or otherwise approved to engage in the business of insurance by the insurance regulator of

delineated on maps issued by the FEMA for individual communities. 44 CFR part 65. A community establishes its eligibility to participate in the NFIP by adopting and enforcing flood plain management measures that regulate new construction and by making substantial improvements within its SFHAs to eliminate or minimize future flood damage. 44 CFR part 60.

[6] *See* 12 CFR part 22 (OCC), part 208 (Board), part 339 (FDIC), part 614 (FCA), and part 760 (NCUA).

[7] Public Law 112–141, 126 Stat. 916 (2012).

[8] Section 100209 of the Biggert-Waters Act, amending section 102(d) of the FDPA (42 U.S.C. 4012a(d)).

[9] Section 100244 of the Act, amending section 102(e) of the FDPA (42 U.S.C. 4012a(e)).

[10] Section 100239 of the Biggert-Waters Act, amending section 102(b) of the FDPA (42 U.S.C. 4012a(b)) and section 1364(a)(3)(C) of the 1968 Act (42 U.S.C. 4104a(a)(3)(C)).

[11] 78 FR 65108 (Oct. 30, 2013).

[12] Public Law 113–89, 128 Stat. 1020 (2014).

[13] 79 FR 64518 (Oct. 30, 2014).

[14] 80 FR 43216 (July 21, 2015).

[15] In connection with the issuance of this proposal, the Agencies have coordinated and consulted with the Federal Financial Institutions Examination Council (FFIEC), as required by certain provisions of the flood insurance statutes. *See* 42 U.S.C. 4012a(b)(1). Four of the five Agencies (OCC, Board, FDIC, and NCUA) are members of the FFIEC.

the State or jurisdiction in which the property to be insured is located; or, in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property, is recognized, or not disapproved, as a surplus lines insurer by the State insurance regulator of the State or jurisdiction where the property to be insured is located;

2. Provides flood insurance coverage that is at least as broad as the coverage provided under a standard flood insurance policy (SFIP), including when considering deductibles, exclusions, and conditions offered by the insurer; [16]

3. Includes a requirement for the insurer to give written notice 45 days before cancellation or non-renewal of flood insurance coverage to the insured and the regulated lending institution, or a servicer acting on the institution's behalf;

4. Includes information about the availability of flood insurance coverage under the NFIP;

5. Includes a mortgage interest clause similar to the clause contained in an SFIP;

6. Includes a provision requiring an insured to file suit not later than one year after the date of a written denial for all or part of a claim under a policy; and

7. Contains cancellation provisions that are as restrictive as the provisions contained in an SFIP.

The proposed rule would define ''SFIP'' to mean a standard flood insurance policy issued under the NFIP in effect as of the date the private policy is provided to a regulated lending institution. The Agencies request comment on whether this is the correct time-frame for determining what version of the SFIP the regulated lending institution should use to evaluate the private policy. As discussed in more detail below, the proposed rule also contains criteria that regulated lending institutions would apply to determine whether a policy's coverage is ''at least as broad as'' SFIP coverage.

The Agencies received a number of general comments in response to this definition of ''private flood insurance'' in the October 2013 Proposed Rule. One commenter argued that imposing a requirement on regulated lending institutions to evaluate a private flood insurance policy for compliance with the statutory definition would put such institutions in an untenable position: A failure to accept a compliant private policy would be considered a violation, while accepting a private policy that is later judged by an examiner to be non-compliant would also result in a violation with potential civil monetary penalties. Another commenter stated that private flood insurance is market-based, and that it is not realistic to require such coverage to duplicate NFIP terms.

The Agencies also received comments on the specific requirements in the definition. One commenter stated that the definition of ''flood'' included in some private flood insurance policies can differ from that of the NFIP, which has led to private policies being rejected by lenders and regulators. Some commenters asserted that the higher deductibles offered under many private flood insurance policies directly conflict with NFIP maximum deductibles. One of these commenters further noted that there are many instances when a higher deductible is reasonable on a policy purchased by a commercial business that has the financial capability to handle such a deductible. Another commenter noted that private flood insurance policies typically include a provision that details the maximum coverage amount, or aggregate limit, payable during the policy term. The statutory definition does not permit such maximum limits, which the commenter characterized as a major change that may not be acceptable to private insurers. One commenter also stated that the statute of limitations provision in the definition should be amended to allow for filing suit within two years after date of loss for commercial properties, not one year as in the definition.

The Agencies also received comments regarding the cancellation provision in the definition. One commenter asserted that the cancellation provision in the proposed definition is problematic because nothing in an SFIP provides a basis to cancel a policy. Another commenter recommended that the definition be amended to recognize the notice of cancellation standards for commercial properties (typically 10 or 30 days). A commenter also stated that notice of cancellation provisions should be allowed that are no more restrictive than provisions in commercial property forms. Another commenter noted that the requirement to provide 45 days written notice of cancellation or non-renewal of flood insurance coverage is problematic because very few private flood policies require this type of notice. This commenter specifically noted that lenders would be unable to accept private flood policies under this definition going forward, including those policies lenders have historically considered acceptable.

The Agencies note that the definition of ''private flood insurance'' included in the October 2013 Proposed Rule and in this current proposal is mandated by the Biggert-Waters Act. Therefore, the Agencies may not make substantive changes to this definition in our regulations. However, the issues raised in connection with this definition by commenters influenced the Agencies' development and inclusion of a proposed provision that would permit institutions at their discretion to accept a private flood policy that does not meet the definition of ''private flood insurance'' in the Biggert-Waters Act, as discussed below.

''*At least as broad as.*'' Many commenters on the October 2013 Proposed Rule also asserted that it would be difficult for institutions to determine whether private flood insurance coverage is ''at least as broad as'' the coverage provided under the SFIP, as required by statute. In response to these comments, the Agencies have proposed to clarify the meaning of this phrase. Specifically, the proposed definition of ''private flood insurance'' would provide that a policy is ''at least as broad as'' the coverage provided under an SFIP if the policy, at a minimum: (1) Defines the term ''flood'' to include the events defined as a ''flood'' in an SFIP; (2) covers both the mortgagor(s) and the mortgagee(s) as loss payees; (3) contains the coverage provisions specified in an SFIP, including those relating to building property coverage; personal property coverage, if purchased by the insured mortgagor(s); other coverages; and the increased cost of compliance; (4) for any total policy coverage amount up to the maximum available under the NFIP at the time the policy is provided to the lender, contains deductibles no higher than the specified NFIP maximum for the same type of property, and includes similar non-applicability provisions as under an SFIP; (5) provides coverage for direct physical loss caused by a flood and may exclude other causes of loss identified in an SFIP; any additional or different exclusions than those in an SFIP may only pertain to coverage that is in addition to the amount and type of coverage that could be provided by an SFIP; and (6) does not contain conditions that narrow the coverage that would be provided in an SFIP.

[16] When determining whether coverage is at least as broad as coverage provided under an SFIP, regulated lenders should compare like policies (*e.g.,* a policy covering a 1–4 family residence or a single family dwelling unit in a condominium to an SFIP dwelling policy, a policy covering all other buildings except residential condominium buildings to an SFIP general property policy, or a policy covering a residential condominium building to an SFIP Residential Condominium Building Association Policy).

The Agencies believe these criteria would ensure that a private flood insurance policy provides coverage that would protect the collateral securing the mortgage loan, thereby protecting both the property owner and the regulated lending institution making the loan, to the same extent as a policy issued under the NFIP. The Agencies specifically request comment on whether these criteria facilitate a regulated lending institution's determination of whether flood insurance coverage is ''at least as broad as'' the coverage provided under the SFIP.

B. Requirement To Purchase Flood Insurance

This section currently sets forth the general requirement that a regulated lending institution shall not make, increase, extend, or renew any designated loan unless the building or mobile home and any personal property securing the loan is covered by flood insurance for the term of the loan. The coverage amount must at least equal the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the 1968 Act (mandatory purchase requirement). It further provides that flood insurance coverage under the FDPA is limited to the building or mobile home and any personal property that secures a loan and not the land itself. A ''designated loan'' means a loan secured by a building or mobile home that is located or to be located in an SFHA in which flood insurance is available under the 1968 Act, as amended.

As in the October 2013 Proposed Rule, the Agencies are proposing to amend this section to implement section 102(b)(1)(B) of the FDPA, as added by section 100239(a)(1) of the Biggert-Waters Act, which requires that all regulated lending institutions accept ''private flood insurance,'' as defined in the statute, if certain conditions are met. Specifically, the proposed rule includes a new provision that would require a regulated lending institution to accept a private flood insurance policy that meets both: (1) The statutory definition of ''private flood insurance,'' and (2) the mandatory purchase requirement, described above.

C. Compliance Aid for Mandatory Acceptance

The October 2013 Proposed Rule proposed to add to the flood insurance regulations a safe harbor that would have allowed lenders to rely on a State insurance regulator's written determination that a particular private insurance policy satisfies the rule's definition of ''private flood insurance'' and, therefore, must be accepted by the lender in satisfaction of the mandatory purchase requirement. The Agencies included this safe harbor because of concern that many regulated lending institutions, especially small institutions, would have difficulty evaluating whether a flood insurance policy meets the definition of ''private flood insurance'' that must be accepted, given their lack of technical insurance expertise regarding flood insurance policies.

Commenters on the October 2013 Proposed Rule expressed considerable support for the inclusion of a safe harbor, with many noting that few lenders have the capacity to determine whether policies meet the required standards. However, some commenters criticized the specific safe harbor included in the proposal and suggested alternatives.

In particular, many commenters raised concerns about the feasibility of State insurance regulators determining if private flood insurance is compliant with the Biggert-Waters Act, a Federal statute. Commenters noted there currently is no mechanism or process for a State insurance regulator to make such a determination. They further noted that even if such a mechanism is developed, States might not implement it consistently and it could lead to fifty different State standards. Many commenters also indicated that a State insurance regulator does not directly supervise providers of surplus lines insurance and, therefore, the safe harbor would not be available for surplus lines insurers.

State insurance regulators raised many of the concerns regarding the proposed safe harbor. One State insurance regulatory agency stated that the proposed safe harbor should provide only a rebuttable presumption that the lender must accept the private flood insurance policy. Accordingly, the lender would not have to accept the policy if the lender or the lender's Federal supervisory agency determines that the policy does not meet the Federal legal standards for ''private flood insurance.'' This commenter also noted that a State insurance regulator lacks the legal authority to certify that a private flood insurance policy complies with Federal law, but could inform the insurer if it sees something in the policy that would make it non-compliant with Federal law. The National Association of State Insurance Commissioners (NAIC) raised a similar objection. It stated that its members had raised concerns about the proposed safe harbor because it may not be possible for some State insurance regulators to determine whether a private flood insurance policy satisfies the Federal statutory definition of the term because of the particular State laws under which they operate.

Another commenter noted that, even if included in the regulation, a lender would not always benefit from the safe harbor because a State may not have made a determination regarding a particular policy. In this case, a lender would have to determine whether private flood insurance is compliant, particularly with respect to the ''as broad as'' requirement.

Among the numerous alternative safe harbors suggested, some commenters recommended that, instead of a State insurance regulator, the insurance company should certify that the private flood insurance policy being provided meets the statutory definition. One commenter stated that the insurance company should not only certify compliance with Federal law requirements, but also indemnify the lender if the policy should prove not to comply with Federal law and result in a loss to the lender. Another commenter recommended that an insurer's certification should provide that the private flood insurance policy's coverage is ''at least as broad as'' that provided under the NFIP. Commenters also suggested that the Agencies provide model certification language or a certification checklist.

The Agencies believe that it would be appropriate for the rule to include a compliance aid provision to assist consumers and regulated lending institutions in determining whether and how a flood insurance policy meets the definition of ''private flood insurance'' and is therefore a policy that the institution is required to accept as long as it otherwise meets the mandatory purchase requirement. Therefore, after careful consideration, and based on the comments received on the proposed ''safe harbor'' under the October 2013 Proposed Rule, the Agencies have included in this proposed rule a compliance aid provision, which provides that a policy is deemed to meet the definition of ''private flood insurance'' if the following three criteria are met: (1) The policy includes, or is accompanied by, a written summary that demonstrates how the policy meets the definition of private flood insurance by identifying the provisions of the policy that meet each criterion in the definition, and confirms that the insurer is regulated in accordance with that definition; (2) the regulated lending institution verifies in writing that the

policy includes the provisions identified by the insurer in its summary and that these provisions satisfy the criteria included in the definition; and (3) the policy includes the following provision within the policy or as an endorsement to the policy: ''This policy meets the definition of private flood insurance contained in 42 U.S.C. 4012a(b)(7) and the corresponding regulation'' (assurance clause).

The Agencies believe that the first criterion of this proposed compliance aid provision, an insurance company's written summary demonstrating how the policy meets the definition of private flood insurance, would assist a regulated lending institution in reviewing flood insurance policies, which are often lengthy and complicated. By identifying provisions of the policy that meet each criterion in this definition, this summary would enable the institution to conduct expeditiously the verification process described in the second criterion. To satisfy the second criterion, a regulated lending institution would be required to perform its own due diligence before accepting the policy instead of solely relying on the insurance company's claim that the policy meets the statutory and regulatory definition of ''private flood insurance.'' The third prong, the insurance company's statement that the policy complies with the definition of ''private flood insurance,'' could provide the policyholder and the regulated lending institution with recourse against the insurance company if the company fails to abide by the terms included in the definition of ''private flood insurance.''

The Agencies recognize that this provision does not relieve a regulated lending institution of the requirement to accept a policy that meets the definition of ''private flood insurance'' and the mandatory purchase requirement, even if the policy is not accompanied by a written summary and does not include an assurance clause. However, the Agencies believe that this provision would facilitate the ability of regulated institutions, as well as consumers, to recognize policies that a lender must accept and may encourage insurance providers to issue policies that meet these criteria.[17]

The Agencies request comment on all aspects of this proposed compliance aid provision. In particular, commenters should address whether the provision as proposed would assist regulated lending institutions in complying with the requirement to accept insurance policies that meet the definition of ''private flood insurance.'' Furthermore, commenters should address whether each of the three criteria in this proposed provision is necessary and feasible. Moreover, the Agencies request comment on whether this provision may provide an incentive to insurance providers to demonstrate that their policy meets the definition of ''private flood insurance'' and, therefore, must be accepted by regulated lending institutions.

D. Discretionary Acceptance

In general. The Agencies are proposing to permit a regulated lending institution to exercise its discretion to accept certain types of flood insurance policies issued by a private insurer other than private flood insurance policies that an institution is required to accept. Although section 102(b)(1)(B) of the FDPA, as added by section 100239(a)(1) of the Biggert-Waters Act, requires a regulated lending institution to accept ''private flood insurance'' as that term is defined by statute, the Agencies note that the statute is silent about whether a regulated lending institution may accept a flood insurance policy issued by a private insurer that does not meet the statutory definition. The Agencies believe that the Congressional intent of the statute was to stimulate the private flood insurance market and, therefore, the statute should be construed to permit discretionary acceptance of flood insurance policies issued by private insurers that do not meet the statutory definition requiring mandatory acceptance.[18]

Additionally, in the October 2013 Proposed Rule, the Agencies specifically requested comment on whether the Agencies should include a provision allowing lenders to exercise discretion in accepting a flood insurance policy issued by a private insurer that does not meet the statutory definition, but otherwise would provide flood coverage consistent with the FDPA, and a majority of commenters were supportive. Among other reasons, commenters suggested that permitting discretionary acceptance would promote a diverse market for flood insurance policies issued by private insurers; reduce delays in lenders' analyses of policies; and limit the likelihood of lender confusion if NFIP requirements included in the definition of ''private flood insurance'' change. Moreover, as noted above, commenters stated that it would be difficult for many policies to meet the statutory definition of ''private flood insurance'' in the Biggert-Waters Act.

In addition to soliciting comment on whether the rule should specifically state that regulated lending institutions may accept flood insurance policies issued by private insurers that do not meet all of the statutory criteria for ''private flood insurance,'' the Agencies asked whether some criteria should be required for such policies. The Agencies received comments with various views on the imposition of such criteria. This proposed rule adds criteria intended to address some of the comments received.

Consequently, in addition to requiring regulated lending institutions to accept private flood insurance policies that comply with the statutory definition of ''private flood insurance,'' the proposed rule would expressly permit a regulated lending institution to accept other types of flood insurance policies issued by private insurers, provided the following criteria are met.[19]

First, under the proposed rule, the flood insurance policy issued by a private insurer would be required to be issued by an insurer that is licensed, admitted, or otherwise approved to engage in the business of insurance by the insurance regulator of the State in which the property to be insured is located. In the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property, the flood insurance issued by a private insurer would be required to be issued by a surplus lines insurer recognized, or not disapproved, by the insurance regulator of the State where the property to be insured is located. This criterion is included in the definition of ''private flood insurance'' in the Biggert-Waters Act, and the Agencies believe it is appropriate to include it as a criterion for discretionary acceptance as well. Because State

[17] We note that this provision is not a ''safe harbor'' as generally understood. Because the statute mandates that regulated institutions accept any private flood insurance policy that meets the statutory definition of ''private flood insurance'' (provided it meets the mandatory purchase requirement), the provision would not reduce or eliminate liability if a lender failed to accept a policy that met the requirements in the statutory definition of private flood insurance. Therefore, we have not used the term ''safe harbor'' in this proposal.

[18] The Biggert-Waters Act's reforms were designed to improve the NFIP's financial integrity and stability as well as to ''increase the role of private markets in the management of flood insurance risk.'' H. Rep. No. 112–102, at 1 (2011); *see also* 158 Cong. Rec. H4622 (daily ed. June 29, 2012) (statement of Rep. Biggert).

[19] The Agencies have included this provision pursuant to their authority under the FDPA to issue regulations directing lending institutions not to make, increase, extend, or renew any loan secured by property located in an SFHA unless the property is covered by ''flood insurance.'' *See* 42 U.S.C. 4012a(b).

insurance regulators, as the functional regulators of insurance companies, may be in the best position to evaluate the financial condition and ability of a private insurer to meet its obligations under a flood insurance policy, the Agencies believe this proposed criterion would safeguard both the consumer purchasing the policy and the regulated lending institution issuing a loan for which the insured property serves as collateral.

Second, under the proposed rule, the flood insurance policy issued by a private insurer would be required to cover both the mortgagor(s) and the mortgagee(s) as loss payees. This proposed criterion would ensure that the flood policy protects both the property owner and the regulated lending institution issuing the mortgage loan.

Third, the proposal would require that a flood insurance policy issued by a private insurer must provide for cancellation following reasonable notice to the borrower only for reasons permitted by FEMA for an SFIP on the Flood Insurance Cancellation Request/Nullification Form, in any case of non-payment, or when cancellation is mandated pursuant to State law. This proposed criterion would ensure that a policy is cancelled only for limited reasons and that the policyholder receives reasonable notification of cancellation.

Finally, the proposal would require that a flood insurance policy issued by a private insurer must either be ''at least as broad'' as the coverage provided under an SFIP, as defined above, or provide coverage that is ''similar'' to coverage provided under an SFIP, including when considering deductibles, exclusions, and conditions offered by the insurer. In determining whether the coverage is similar to coverage provided under an SFIP, the proposal would require the regulated lending institution to: (1) Compare the private policy with an SFIP to determine the differences between the private policy and an SFIP; (2) reasonably determine that the private policy provides sufficient protection of the loan secured by the property located in an SFHA; and (3) document its findings. The Agencies believe these proposed criteria would provide safeguards so that a regulated lending institution does not accept policies that do not sufficiently protect the collateral securing the loan.

The Agencies believe that the proposed discretionary acceptance provision provides regulated lending institutions with greater flexibility to accept flood insurance policies that do not contain all of the requirements included in the definition of ''private flood insurance.'' Specifically, under this provision, regulated lending institutions would be able to accept a flood insurance policy issued by a private insurer that: (1) Does not contain a mortgage interest clause similar to the clause contained in an SFIP, provided that the policy covers the mortgagor and the mortgagee; [20] (2) does not contain information about the availability of flood insurance coverage under the NFIP; (3) provides for cancellation of the policy following ''reasonable notice'' to the borrower instead of requiring 45 days prior written notice for cancellation or non-renewal; (4) permits cancellation of the policy for reasons of non-payment or when State law mandates cancellation, in addition to the reasons for cancellation permitted in an SFIP; and (5) does not contain a provision requiring an insured to file suit not later than one year after the date of a written denial of all or part of a claim under the policy. In addition, with respect to deductibles, exclusions, and conditions, coverage under a policy accepted pursuant to the proposed discretionary acceptance provision could be ''similar to'' an SFIP instead of ''at least as broad as'' an SFIP, provided the institution documents that it has compared the differences between the policy and an SFIP and that it has reasonably determined that the private policy provides sufficient protection of the loan secured by the property to be insured.

The Agencies solicit comment as to whether these proposed criteria are appropriate for regulated lending institutions accepting flood insurance policies issued by a private insurer that do not meet the statutory definition of ''private flood insurance.'' In particular, the Agencies seek comment on whether the proposed criteria are compatible with industry practice, or whether the proposed criteria would exclude currently accepted policies or significantly limit the growth of the market for flood insurance policies issued by private insurers.

Separately, the Agencies request comment in three other areas related to the proposed discretionary acceptance criteria: (1) Whether the phrase ''sufficient protection of the loan'' is adequately clear, (2) whether the proposed criteria raise any safety and soundness risks for regulated lending institutions, and (3) whether the proposed criteria raise any consumer protection issues.

Exception for mutual aid societies. The proposed rule also includes an exception for certain private flood coverage provided by mutual aid societies. This proposed exception is intended to be responsive to several commenters on the October 2013 Proposed Rule that supported adding provisions permitting regulated lending institutions to accept certain non-traditional coverage that does not satisfy the statutory definition for ''private flood insurance,'' such as Amish Aid plans, even though this coverage is not provided by a State-regulated insurance company. Under this proposed exception, flood protection offered by mutual aid societies that would not meet all of the above requirements for discretionary acceptance could continue to be offered, for example, to members of religious communities who do not purchase insurance from traditional insurance companies, provided certain conditions are met.

Specifically, the proposed rule would permit a regulated lending institution to accept a private policy issued by a mutual aid society in satisfaction of the mandatory flood insurance purchase requirement if: (1) The institution's primary supervisory agency determines that such policy or types of policies meet the requirement for flood insurance for purposes of the Federal flood insurance statutes; (2) the policy meets the amount of coverage for losses and term requirements in the mandatory flood insurance purchase requirement; (3) the policy covers both the mortgagor(s) and the mortgagee(s) as loss payees; and (4) the regulated lending institution has determined that the policy provides sufficient protection of the loan secured by the property located in an SFHA.

In determining whether a policy issued by a mutual aid society provides sufficient protection of the loan under the proposed rule, the regulated lending institution would be required to: (1) Verify that the policy is consistent with general safety and soundness principles, such as whether deductibles are reasonable based on the borrower's financial condition; (2) consider the policy provider's ability to satisfy claims, such as whether the policy provider has a demonstrated record of covering losses; and (3) document its conclusions.

Under the proposed rule, each Agency would use its discretion individually to determine whether policies offered by

[20] The SFIP mortgage interest clause ensures that any loss payable will be paid to any mortgagee named in the NFIP policy application and declarations page, as well as any other mortgagee or loss payee determined to exist at the time of the loss. We note that this differs from a clause covering both the mortgagor and the mortgagee, who are named in the policy.

mutual aid societies qualify as flood insurance for purposes of the Federal flood insurance statutes. The OCC and FCA propose to conduct their own evaluations using the criteria that institutions are expected to consider under 12 CFR 22.3(c)(4) or 12 CFR 614.4930(c)(4), respectively. Based on their current practices regarding non-traditional flood insurance plans, the Board, FDIC, and NCUA expect that cases in which they approve policies issued by mutual aid societies to be rare and limited.

The OCC notes that it currently permits national banks and Federal savings associations to accept flood coverage issued by Amish mutual aid societies, such as Amish Aid plans. Amish Aid societies consist of members who share a common religious bond and, in accordance with this common bond, have a demonstrated history of fulfilling the terms of agreements (Amish Aid plans) to cover losses to members' property caused by flooding in accordance with this common bond, either by paying to cover the cost of damaged structures or by repairing or rebuilding the structures. Amish Aid plans thereby provide sufficient protection of the loan secured by the property and protect the lender as well as the borrower. The proposed rule, therefore, would maintain the status quo by continuing to allow national banks and Federal savings associations to accept flood coverage issued by mutual aid societies that have a demonstrated history of covering expenses caused by flood damage to members' property, and that is approved by the OCC, such as Amish Aid plans.

The Agencies request comment on the proposed requirements for discretionary acceptance of polices issued by mutual aid societies, including the proposed criteria a regulated lending institution would be required to consider in determining whether the policy provides sufficient protection for the loan.

Discretionary acceptance for nonresidential property. The mandatory flood insurance purchase requirement applies to loans secured by either residential or nonresidential properties. The Agencies understand that flood insurance policies issued by private insurers covering loans secured by nonresidential properties, such as commercial properties, may have coverage, deductibles, exclusions, and conditions that differ from NFIP policies based on the type, size, and number of nonresidential properties covered by the policy. In some instances, such policies are individually negotiated and tailored to the nonresidential property that secures a loan. The Agencies request comment on whether the proposed definition of ''private flood insurance'' or the proposed discretionary acceptance provision, both of which include specific requirements with respect to deductibles, exclusions, conditions, and cancellation, would prevent regulated lending institutions from accepting flood insurance policies issued by private insurers in the nonresidential lending context, even though coverage not including these requirements would be acceptable for policies covering another type of risk, such as fire or wind.

Furthermore, the Agencies request comment on whether the final rule should include criteria for the discretionary acceptance of flood insurance policies issued by private insurers for nonresidential properties that are different from the criteria applicable to flood insurance policies issued by private insurers for residential properties. For example, the Agencies could require that the policy: (1) Meet the amount of coverage for losses and term requirements specified in the mandatory purchase requirement, (2) cover both the mortgagor(s) and the mortgagee(s) as loss payees, and (3) require the regulated institution to determine that the policy provides sufficient protection of the loan secured by the property, consistent with general safety and soundness principles, as is required for the acceptance of coverage provided by mutual aid societies. The Agencies request comment on whether a provision for flood insurance issued by private insurers covering nonresidential properties that includes these criteria is appropriate or whether different or additional criteria should be applied in the nonresidential context. For example, should the Agencies require the policy to be issued by an insurer that is licensed, admitted, or otherwise approved to engage in the business of insurance by the insurance regulator of the State where the property to be insured is located, or issued by a surplus lines insurer recognized, or not disapproved, by the insurance regulator of the State where the property to be insured is located?

III. Regulatory Analysis

A. Regulatory Flexibility Act

OCC: In general, the Regulatory Flexibility Act (RFA) requires that in connection with a notice of proposed rulemaking an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities.[21] Under section 605(b) of the RFA, this analysis is not required if an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities and publishes its certification and a short explanatory statement in the **Federal Register** along with its rule.

The OCC currently supervises approximately 1,032 small entities.[22] We identified 974 OCC-supervised small entities that may be impacted by the proposed rule, which is a substantial number.[23] The OCC classifies the economic impact of total costs on a bank as significant if the total costs in a single year are greater than 5 percent of total salaries and benefits, or greater than 2.5 percent of total non-interest expense. The OCC estimates that the average cost per small bank is approximately $10,400 per year. Using this cost estimate, we believe the proposed rule will have a significant economic impact on four small banks, which is not a substantial number. Therefore, the OCC certifies that this regulation, if adopted, will not have a significant economic impact on a substantial number of small entities supervised by the OCC. Accordingly, a regulatory flexibility analysis is not required.

Board: The RFA requires an agency to publish an initial regulatory flexibility analysis with a proposed rule or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. The Board is publishing an initial regulatory flexibility analysis and requests public comment on all aspects of its analysis. The Board will conduct a final regulatory flexibility analysis after considering the comments received during the public comment period.

[21] *See* 5 U.S.C. 601 *et seq.*

[22] We base our estimate of the number of small entities on the Small Business Administration's size thresholds for commercial banks and savings institutions, and trust companies, which are $550 million and $38.5 million, respectively. Consistent with the General Principles of Affiliation 13 CFR 121.103(a), we count the assets of affiliated financial institutions when determining if we should classify an institution we supervise as a small entity. We used December 31, 2015, to determine size because a ''financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See* footnote 8 of the U.S. Small Business Administration's *Table of Size Standards.*

[23] To estimate the number of small banks that may be affected if the proposed rule is implemented, we determined the number of small banks that (a) self-identify by reporting mortgage servicing assets, reporting loans secured by real estate, or as originating 1–4 family residential mortgage loans on a Call Report submitted for any quarter in calendar year 2015 or during the first quarter of 2016 or (b) are identified by OCC examiners as originating residential mortgage loans or as Home Mortgage Disclosure Act filers.

1. *Statement of the need for, and objectives of, the proposed rule.* The Board is proposing revisions to Regulation H to implement the private flood insurance provisions of the Biggert-Waters Act. Consistent with the Biggert-Waters Act, the proposal would require regulated lending institutions accept any private insurance policy that meets the Biggert-Waters Act's definition of ''private flood insurance'' in satisfaction of the mandatory flood insurance purchase requirement. The proposed rule would also include a compliance aid that would deem a policy to meet the Biggert-Waters Act definition of ''private flood insurance'' if: (i) The policy includes, or is accompanied by, a written summary from the insurer that demonstrates how the policy meets the definition of private flood insurance; (ii) the lender verifies that the policy includes the provisions identified in the summary; and (iii) the policy includes language certifying that the policy meets the criteria. The Agencies are also proposing to permit lenders to accept, at their discretion, flood insurance policies issued by private insurers, and plans issued by mutual aid societies, that do not meet the definition of ''private flood insurance,'' provided they meet certain conditions.

2. *Small entities affected by the proposed rule.* All State member banks that are subject to the Federal flood insurance statutes and the flood insurance provisions of Regulation H would be subject to the proposed rule. As of September 27, 2016, there were 821 State member banks. Under regulations issued by the Small Business Administration, banks and other depository institutions with total assets of $550 million or less are considered small. Approximately 588 State member banks would be considered small entities by the Small Business Administration.[24]

The Board believes the proposal will not have a significant impact on small entities. First, the Board believes that most existing flood insurance policies issued by private insurers would not meet the definition of ''private flood insurance'' under the Biggert-Waters Act and that insurers would request that lenders accept the policies under the more flexible proposed discretionary acceptance provisions. The proposed provisions on discretionary acceptance, including plans issued by mutual aid societies, are at the discretion of the lender. As a result, regulated lending institutions may choose not to accept policies under those proposed provisions and would therefore have no compliance burden associated with those provisions.

Second, with respect to flood insurance policies that a private insurer would seek to have a lender accept under the proposed mandatory acceptance provisions, the Board notes that for those regulated lending institutions, including those that are considered small entities, that accept flood insurance policies issued by private insurers today, such institutions already have experience evaluating such policies with the criteria in the Biggert-Waters Act definition of ''private flood insurance,'' which are almost identical to the criteria referenced in guidance issued by the Agencies and that currently govern the acceptance of private policies by regulated lending institutions. Third, as discussed in the **SUPPLEMENTARY INFORMATION**, the Board believes the proposed rule would alleviate the burden on regulated lending institutions, including those that are considered small entities, of evaluating whether a flood insurance policy issued by a private insurer meets the definition of ''private flood insurance'' under the mandatory acceptance provisions with the addition of a proposed compliance aid that leverages the expertise of the insurer issuing the policy.

Although the proposed rule could impact a substantial number of small entities, the Board estimates that the costs to these entities will not be significant. The Board estimates that the cost for each covered small entity will be approximately $8,096 during the first year the proposal goes into effect. This estimate includes first year compliance costs[25] and ongoing costs[26] and assumes that the usage of private flood insurance policies by borrower, as defined by the proposed rule, is distributed consistently across small entities. The actual ongoing cost estimate may be lower than stated because the estimate assumes that all of the policies for properties in High Risk Areas will cover loans held by Board-supervised institutions when some of these loans may be held by institutions supervised by other Agencies.

3. *Other Federal rules.* The Board has not identified any likely duplication, overlap and/or potential conflict between the proposed rule and any Federal rule.

4. *Significant alternatives to the proposed revisions.* The Board solicits comment on any significant alternatives that would reduce the regulatory burden associated with this proposed rule on small entities.

FDIC: The RFA generally requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis describing the impact of the proposed rule on small entities.[27] A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Small Business Administration has defined ''small entities'' to include banking organizations with total assets less than or equal to $550 million.[28]

The FDIC supervises 3,204 small banking entities that have originated 1–4 family residential mortgage loans or have reported holding mortgage servicing assets or loans secured by real estate and may therefore be affected by the proposed rule.[29] The FDIC estimates that the annual cost for each covered small entity will range between $2,020 and $4,500 per year, on average. This estimate includes compliance costs[30] and ongoing costs[31] and assumes that

[24] The Board reviewed the number of State member banks that reported mortgage servicing assets, loans secured by real estate, or originating 1–4 family residential mortgage loans on a Call Report submitted for the four quarters ending on June 30, 2016, which included nearly all State member banks. Consequently, the Board is estimating that all small State member banks may be affected if the proposed rule is implemented.

[25] Fixed compliance costs are estimated assuming each small entity requires one full-time employee working 20 hours at a rate of $101 an hour. The total cost of compliance for all 821 covered entities is approximately $1.658 million, or $2,020 for each small entity.

[26] Ongoing compliance costs are estimated based on available data. According to FEMA's *Policy and Claim Statistics for Flood Insurance* there are approximately 5,083,071 flood insurance policies nationally as of June 2016. Only 3,537,059 of these policies are located in ''High Risk Areas'' and would therefore require flood insurance. The Board estimated the future adoption rate of private flood insurance will be approximately 10 percent of the total of flood insurance policies in any given year. Further, small entities hold approximately 10 percent of all loans secured by real estate held in portfolio by all Board-supervised banks as of June 30, 2016. The Board therefore assumed that small entities will have to review a similar share of annual private flood insurance policies. Ongoing policy review costs are estimated to be approximately $6,076 per year for each small entity, assuming one labor hour per year, per policy, at $101 per hour.

[27] 5 U.S.C. 601 *et seq.*

[28] 13 CFR 121.201 (as amended, effective December 2, 2014).

[29] FDIC Call Reports (four quarters ending on March 31, 2016).

[30] Fixed compliance costs are estimated assuming each small entity requires one full-time employee working 20 hours at a rate of $101 an hour. The total cost of compliance for all 3,204 covered entities is approximately $6.5 million, or $2,020 for each small entity.

[31] Ongoing compliance costs are estimated based on available data. According to FEMA's *Policy and*

Continued

the usage of private flood insurance policies by borrowers, as defined by the proposed rule, is distributed consistently across small entities. The actual ongoing cost estimates are likely to be lower than stated because the estimate assumes that all of the loans for properties in High Risk Areas are held by FDIC-supervised institutions; at least some of these loans are held by OCC- and Board-supervised institutions.

The proposed rule could impact a substantial number of small entities; however, the costs to those entities are not estimated to be significant. For this reason, the FDIC certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities that it supervises.

FCA: Pursuant to section 605(b) of the RFA, the FCA hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, Farm Credit System institutions are not ''small entities'' as defined in the RFA.

NCUA: The RFA requires NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small entities.[32] Under section 605(b) of the RFA, this analysis is not required if an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities and publishes its certification and a short explanatory statement in the **Federal Register** along with its rule.[33] For purposes of this analysis, NCUA considers small credit unions to be those having under $100 million in assets.[34] As of June 30, 2016, there are 4,345 small, Federally insured credit unions, and only about 2,894 of these credit unions have real estate loans.

NCUA classifies the economic impact of total costs on a credit union as significant if the total costs in a single year are greater than 5 percent of total salaries and benefits, or greater than 2.5 percent of total non-interest expense. NCUA estimates that the average cost per small credit union is approximately $2,020 per year. Using this cost estimate, NCUA believes the proposed rule will have a significant economic impact on 63 small credit unions, which is not a substantial number. Therefore, NCUA certifies that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

B. Unfunded Mandates Reform Act of 1995

The OCC has analyzed the proposed rule under the factors in the Unfunded Mandates Reform Act of 1995 (UMRA).[35] Under this analysis, the OCC considered whether the proposed rule includes a Federal mandate that may result in 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). Under Title II of the UMRA, indirect costs, foregone revenues and opportunity costs are not included when determining if a mandate meets or exceeds UMRA's cost threshold. The UMRA does not apply to regulations that incorporate requirements specifically set forth in law.

The OCC's estimated annual UMRA cost is approximately $36 million. Therefore, the OCC finds that the proposed rule does not trigger the UMRA cost threshold. Accordingly, the OCC has not prepared the written statement described in section 202 of the UMRA.

C. Paperwork Reduction Act of 1995

The OCC, Board, FDIC, and NCUA (the Agencies)[36] have determined that this proposed rule involves a collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501 *et seq.*).

In accordance with the PRA (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The collection of information that is subject to the PRA by this proposed rule is found in 12 CFR 22.3, 208.25, 339.3, and 760.3.

The Agencies may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the information collection displays a currently valid OMB control number. The OMB control numbers are 1557–0326 (OCC), 7100–0280 (Board), and 3133–0143 (NCUA). The FDIC will seek a new OMB control number.

Under §§ 22.3(c)(2), 208.25(c)(3)(ii), 339.3(c)(2), and 760.3(c)(2), a policy is deemed to meet the definition of private flood insurance if, among other things, (i) it includes a written summary demonstrating how the policy meets the definition of private flood insurance, identifying the provisions of the policy that meet each criterion in the definition and confirms that the insurer is regulated in accordance with that definition and (ii) the institution verifies in writing that the policy includes the provisions identified by the insurer in the summary provided and that these provisions satisfy the criteria included in the definition.

Under §§ 22.3(c)(3)(iv)(B)(*3*), 208.25(c)(3)(iii)(D)(*2*)(*iii*), 339.3(c)(3)(iv)(B)(*3*), and 760.3(c)(3)(iv)(B)(*3*), institutions have the discretion to accept a flood insurance policy issued by a private insurer that is not issued under the NFIP, does not meet the definition of private flood insurance, and does not satisfy §§ 22.3(c)(3)(iv)(A), 208.25(c)(3)(iii)(D)(*1*), 339.3(c)(3)(iv)(A), and 760.3(c)(iv)(A) if, among other things, the institution has documented in writing that it has compared the private policy with an SFIP to determine the differences between the private policy and an SFIP and reasonably determines that the private policy provides sufficient protection of the loan.

Under §§ 22.3(c)(4)(iv), 208.5(c)(iv)(D), 339.3(c)(4)(iv), and 760.3(c)(4)(iv), institutions may accept a private policy issued by a mutual aid society if, among other things, it has determined that the policy provides sufficient protection of the loan secured by the property located in the SFHA and documented its conclusions.

Claim Statistics for Flood Insurance there are approximately 5,118,254 flood insurance policies nationally as of March 2016. Only 3,568,638 of these policies are located in ''High Risk Areas'' and would therefore require flood insurance. The FDIC estimated the future adoption rate of private flood insurance will be between 1 percent and 10 percent of the total of flood insurance policies in any given year. Further, small entities hold approximately 22 percent of all loans secured by real estate held in portfolio by all FDIC-supervised banks as of March 31, 2016. The FDIC therefore assumed that small entities will have to review a similar share of annual private flood insurance policies. Ongoing policy review costs are estimated to be between $250 and $2,500 per year for each small entity, assuming one labor hour per year, per policy, at $101 per hour.

[32] 5 U.S.C. 603(a).

[33] 5 U.S.C. 605(b).

[34] 80 FR 57512 (September 24, 2015).

[35] Public Law 104–4, 109 Stat. 48 (1995), codified at 2 U.S.C. 1501 *et seq.*

[36] The FCA has determined that the proposed rule does not involve a collection of information pursuant to the PRA for System institutions because System institutions are Federally chartered instrumentalities of the United States and instrumentalities of the United States are specifically excepted from the definition of ''collection of information'' contained in 44 U.S.C. 3502(3).

Burden Estimates

OCC:
Number of Respondents: 1,341.
Total Burden: 129,968 hours.
Board:
Number of Respondents: 846.
Total Burden: 42,050 hours.
FDIC:
*Number of Respondents:*3,885.
Total Burden: 136,100 hours.
NCUA:
Number of Respondents: 4,058.
Total Burden: 95,211 hours.

These collections are available to the public at *www.reginfo.gov.*

Comments are invited on:

(a) Whether the information collections are necessary for the proper performance of the Agencies' functions, including whether the information has practical utility;

(b) The accuracy of the Agencies' estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

D. Riegle Community Development and Regulatory Improvement Act of 1994

Section 302(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) [37] requires that each Federal banking agency,[38] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, new regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions generally must take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.

The Federal banking agencies note that comment on these matters has been solicited in other sections of this **SUPPLEMENTARY INFORMATION** section, and that the requirements of RCDRIA will be considered as part of the overall rulemaking process. In addition, the Federal banking agencies invite any other comments that further will inform the Federal banking agencies' consideration of RCDRIA.

List of Subjects

12 CFR Part 22

Flood insurance, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Flood insurance, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 339

Flood insurance, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 614

Agriculture, Banks, banking, Flood insurance, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 760

Credit unions, Mortgages, Flood insurance, Reporting and Recordkeeping requirements.

Office of the Comptroller of the Currency

12 CFR CHAPTER I

Authority and Issuance

For the reasons set forth in the joint preamble and under the authority of 12 U.S.C. 93a, the OCC proposes to amend chapter I of title 12 of the Code of Federal Regulations as follows:

PART 22—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

■ 1. The authority citation for part 22 continues to read as follows:

Authority: 12 U.S.C. 93a, 1462a, 1463, 1464, and 5412(b)(2)(B); 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

■ 2. Section 22.2 is amended by:

■ a. Redesignating paragraphs (h) and (i) as paragraphs (i) and (j), paragraphs (j) and (k) as (l) and (m), and (l) and (m) as (o) and (p); and

■ b. Adding new paragraphs (h), (k) and (n) to read as follows:

§ 22.2 Definitions.

* * * * *

(h) *Mutual aid society* means an organization—

(1) Whose members share a common religious, charitable, educational, or fraternal bond;

(2) That covers losses caused by damage to members' property pursuant to an agreement, including damage caused by flooding, in accordance with this common bond; and

(3) That has a demonstrated history of fulfilling the terms of agreements to cover losses to members' property caused by flooding.

* * * * *

(k) *Private flood insurance* means an insurance policy that:

(1) Is issued by an insurance company that is:

(i) Licensed, admitted, or otherwise approved to engage in the business of insurance in the State or jurisdiction in which the property to be insured is located, by the insurance regulator of that State or jurisdiction; or

(ii) Recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the State or jurisdiction in which the property to be insured is located in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property;

(2) Provides flood insurance coverage that is at least as broad as the coverage provided under an SFIP, including when considering deductibles, exclusions, and conditions offered by the insurer. For purposes of this part, a policy is at least as broad as the coverage provided under an SFIP if, at a minimum, the policy:

(i) Defines the term ''flood'' to include the events defined as a ''flood'' in an SFIP;

(ii) Covers both the mortgagor(s) and the mortgagee(s) as loss payees;

(iii) Contains the coverage and provisions specified in an SFIP, including those relating to building property coverage; personal property coverage, if purchased by the insured mortgagor(s); other coverages; and the increased cost of compliance;

(iv) Contains deductibles no higher than the specified maximum for the same type of property, and includes similar non-applicability provisions, as under an SFIP, for any total policy coverage amount up to the maximum

[37] 12 U.S.C. 4802(a).

[38] For purposes of RCDRIA, ''Federal banking agency'' means the OCC, FDIC, and Board. *See* 12 U.S.C. 4801.

available under the NFIP at the time the policy is provided to the lender;

(v) Provides coverage for direct physical loss caused by a flood and may exclude other causes of loss identified in an SFIP. Any additional or different exclusions than those in an SFIP may pertain only to coverage that is in addition to the amount and type of coverage that could be provided by an SFIP; and

(vi) May not contain conditions that narrow the coverage provided in an SFIP;

(3) Includes all of the following:

(i) A requirement for the insurer to give written notice 45 days before cancellation or non-renewal of flood insurance coverage to:

(A) The insured; and

(B) The national bank or Federal savings association that made the designated loan secured by the property covered by the flood insurance, or the servicer acting on its behalf;

(ii) Information about the availability of flood insurance coverage under the NFIP;

(iii) A mortgage interest clause similar to the clause contained in an SFIP; and

(iv) A provision requiring an insured to file suit not later than one year after the date of a written denial of all or part of a claim under the policy; and

(4) Contains cancellation provisions that are as restrictive as the provisions contained in an SFIP.

* * * * *

(n) *SFIP* means, for purposes of §§ 22.2 and 22.3, a standard flood insurance policy issued under the NFIP in effect as of the date the private policy is provided to a national bank or Federal savings association.

* * * * *

■ 3. Section 22.3 is amended by adding paragraph (c) to read as follows:

§ 22.3 Requirement to purchase flood insurance where available.

* * * * *

(c) *Private flood insurance.* (1) *Mandatory acceptance.* A national bank or Federal savings association must accept private flood insurance, as defined in § 22.2(k), in satisfaction of the flood insurance purchase requirement, provided that the private flood insurance meets the requirement for coverage under paragraph (a) of this section.

(2) *Compliance aid for mandatory acceptance.* A flood insurance policy is deemed to meet the definition of private flood insurance in § 22.2(k) for purposes of paragraph (a) of this section if:

(i) The policy includes, or is accompanied by, a written summary that demonstrates how the policy meets the definition of private flood insurance in § 22.2(k) by identifying the provisions of the policy that meet each criterion in the definition, and confirms that the insurer is regulated in accordance with that definition;

(ii) The national bank or Federal savings association verifies in writing that the policy includes the provisions identified by the insurer in the summary provided pursuant to paragraph (c)(2)(i) of this section and that these provisions satisfy the criteria included in the definition; and

(iii) The policy includes the following provision within the policy or as an endorsement to the policy: ''This policy meets the definition of private flood insurance contained in 42 U.S.C. 4012a(b)(7) and the corresponding regulation.''

(3) *Discretionary acceptance.* A national bank or Federal savings association may accept a flood insurance policy issued by a private insurer that is not issued under the NFIP and does not meet the definition of private flood insurance, as defined in § 22.2(k), in satisfaction of the flood insurance purchase requirement under paragraph (a) of this section, only if the coverage under such flood insurance policy meets the amount and term requirements specified in paragraph (a) of this section, and the policy:

(i) Is issued by an insurer that is licensed, admitted, or otherwise approved to engage in the business of insurance in the State or jurisdiction in which the property to be insured is located by the insurance regulator of that State; or in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property, is issued by a surplus lines insurer recognized, or not disapproved, by the insurance regulator of the State where the property to be insured is located;

(ii) Covers both the mortgagor(s) and the mortgagee(s) as loss payees;

(iii) Provides for cancellation following reasonable notice to the borrower only for reasons permitted by FEMA for an SFIP on the Flood Insurance Cancellation Request/Nullification Form, in any case of non-payment, or when cancellation is mandated pursuant to State law; and

(iv) Either:

(A) Meets the criteria set forth in paragraphs (k)(2)(i) and (iii) through (vi) of this section; or

(B) Provides coverage that is similar to coverage provided under an SFIP, including when considering deductibles, exclusions, and conditions offered by the insurer, and the national bank or Federal savings association has:

(*1*) Compared the private policy with an SFIP to determine the differences between the private policy and an SFIP;

(*2*) Reasonably determined that the private policy provides sufficient protection of the loan secured by the property located in a special flood hazard area; and

(*3*) Documented its findings under paragraphs (c)(3)(iv)(B)(*1*) and (*2*) of this section.

(4) *Exception for mutual aid societies.* Notwithstanding the requirements of paragraph (c)(3) of this section, a national bank or Federal savings association may accept a private policy issued by a mutual aid society in satisfaction of the flood insurance purchase requirement under paragraph (a) of this section if:

(i) The OCC has determined that such types of policies qualify as flood insurance for purposes of this Act;

(ii) The policy meets the amount of coverage for losses and term requirements specified in paragraph (a) of this section;

(iii) The policy covers both the mortgagor(s) and the mortgagee(s) as loss payees; and

(iv) The national bank or Federal savings association has determined that the policy provides sufficient protection of the loan secured by the property located in a special flood hazard area. In making this determination, the national bank or Federal savings association must:

(A) Verify that the policy is consistent with general safety and soundness principles, such as whether deductibles are reasonable based on the borrower's financial condition;

(B) Consider the policy provider's ability to satisfy claims, such as whether the policy provider has a demonstrated record of covering losses; and

(C) Document its conclusions.

Federal Reserve System

12 CFR CHAPTER II

Authority and Issuance

For the reasons set forth in the joint preamble, the Board proposes to amend part 208 of chapter II of title 12 of the Code of Federal Regulations as set forth below:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

■ 4. The authority citation for part 208 is revised to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486,

601, 611, 1814, 1816, 1818, 1820(d)(9), 1823(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1831w, 1831x, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, 3353, and 3905–3909; 15 U.S.C. 78b, 78l(b), 78l(i), 780–4(c)(5), 78q, 78q–1, 78w, 1681s, 1681w, 6801 and 6805; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104b, 4106, and 4128.

■ 5. Amend § 208.25 by revising paragraphs (b)(7) through (b)(11) and adding paragraphs (b)(12) through (b)(14) and (c)(3) to read as follows:

§ 208.25 Loans in areas having special flood hazards.

* * * * *

(b) *Definitions.* For purposes of this section:

* * * * *

(7) *Mutual aid society* means an organization—

(i) Whose members share a common religious, charitable, educational, or fraternal bond;

(ii) That covers losses caused by damage to members' property pursuant to an agreement, including damage caused by flooding, in accordance with this common bond; and

(iii) That has a demonstrated history of fulfilling the terms of agreements to cover losses to members' property caused by flooding.

(8) *NFIP* means the National Flood Insurance Program authorized under the Act.

(9) *Private flood insurance* means an insurance policy that:

(i) Is issued by an insurance company that is:

(A) Licensed, admitted, or otherwise approved to engage in the business of insurance in the State or jurisdiction in which the property to be insured is located, by the insurance regulator of that State or jurisdiction; or

(B) Recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the State or jurisdiction in which the property to be insured is located in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property;

(ii) Provides flood insurance coverage that is at least as broad as the coverage provided under an SFIP, including when considering deductibles, exclusions, and conditions offered by the insurer. For purposes of this part, a policy is at least as broad as the coverage provided under an SFIP if, at a minimum, the policy:

(A) Defines the term ''flood'' to include the events defined as a ''flood'' in an SFIP;

(B) Covers both the mortgagor(s) and the mortgagee(s) as loss payees;

(C) Contains the coverage and provisions specified in an SFIP, including those relating to building property coverage; personal property coverage, if purchased by the insured mortgagor(s); other coverages; and the increased cost of compliance;

(D) Contains deductibles no higher than the specified maximum for the same type of property, and includes similar non-applicability provisions, as under an SFIP, for any total policy coverage amount up to the maximum available under the NFIP at the time the policy is provided to the lender;

(E) Provides coverage for direct physical loss caused by a flood and may exclude other causes of loss identified in an SFIP. Any additional or different exclusions than those in an SFIP may pertain only to coverage that is in addition to the amount and type of coverage that could be provided by an SFIP; and

(F) May not contain conditions that narrow the coverage provided in an SFIP;

(iii) Includes all of the following:

(A) A requirement for the insurer to give written notice 45 days before cancellation or non-renewal of flood insurance coverage to:

(*1*) The insured; and

(*2*) The member bank that made the designated loan secured by the property covered by the flood insurance, or the servicer acting on its behalf;

(B) Information about the availability of flood insurance coverage under the NFIP;

(C) A mortgage interest clause similar to the clause contained in an SFIP; and

(D) A provision requiring an insured to file suit not later than one year after the date of a written denial of all or part of a claim under the policy; and

(iv) Contains cancellation provisions that are as restrictive as the provisions contained in an SFIP.

(10) *Residential improved real estate* means real estate upon which a home or other residential building is located or to be located.

(11) *Servicer* means the person responsible for:

(i) Receiving any scheduled, periodic payments from a borrower under the terms of a loan, including amounts for taxes, insurance premiums, and other charges with respect to the property securing the loan; and

(ii) Making payments of principal and interest and any other payments from the amounts received from the borrower as may be required under the terms of the loan.

(12) *SFIP* means, for purposes of paragraphs (b) and (c) of this section, a standard flood insurance policy issued under the NFIP in effect as of the date the private policy is provided to a member bank.

(13) *Special flood hazard area* means the land in the flood plain within a community having at least a one percent chance of flooding in any given year, as designated by the Administrator of FEMA.

(14) *Table funding* means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds.

(c) *Requirement to purchase flood insurance where available.*

* * * * *

(3) *Private flood insurance.* (i) *Mandatory acceptance.* A member bank must accept private flood insurance, as defined in paragraph (b)(9) of this section, in satisfaction of the flood insurance purchase requirement, provided that the private flood insurance meets the requirement for coverage under paragraph (c)(1) of this section.

(ii) *Compliance aid for mandatory acceptance.* A flood insurance policy is deemed to meet the definition of private flood insurance in paragraph (b)(9) of this section for purposes of paragraph (c)(1) of this section if:

(A) The policy includes, or is accompanied by, a written summary that demonstrates how the policy meets the definition of private flood insurance in paragraph (b)(9) of this section by identifying the provisions of the policy that meet each criterion in the definition, and confirms that the insurer is regulated in accordance with that definition;

(B) The member bank verifies in writing that the policy includes the provisions identified by the insurer in the summary provided pursuant to paragraph (c)(3)(ii)(A) of this section and that these provisions satisfy the criteria included in the definition; and

(C) The policy includes the following provision within the policy or as an endorsement to the policy: ''This policy meets the definition of private flood insurance contained in 42 U.S.C. 4012a(b)(7) and the corresponding regulation.''

(iii) *Discretionary acceptance.* A member bank may accept a flood insurance policy issued by a private insurer that is not issued under the NFIP and does not meet the definition of private flood insurance, as defined in paragraph (b)(9) of this section, in satisfaction of the flood insurance purchase requirement under paragraph (c)(1) of this section, only if the coverage under such flood insurance policy

meets the amount and term requirements specified in paragraph (c)(1) of this section, and the policy:

(A) Is issued by an insurer that is licensed, admitted, or otherwise approved to engage in the business of insurance in the State or jurisdiction in which the property to be insured is located by the insurance regulator of that State; or in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property, is issued by a surplus lines insurer recognized, or not disapproved, by the insurance regulator of the State where the property to be insured is located;

(B) Covers both the mortgagor(s) and the mortgagee(s) as loss payees;

(C) Provides for cancellation following reasonable notice to the borrower only for reasons permitted by FEMA for an SFIP on the Flood Insurance Cancellation Request/Nullification Form, in any case of non-payment, or when cancellation is mandated pursuant to State law; and

(D) Either:

(*1*) Meets the criteria set forth in paragraphs (b)(9)(ii)(A) and (C) through (F) of this section; or

(*2*) Provides coverage that is similar to coverage provided under an SFIP, including when considering deductibles, exclusions, and conditions offered by the insurer, and the member bank has:

(*i*) Compared the private policy with an SFIP to determine the differences between the private policy and an SFIP;

(*ii*) Reasonably determined that the private policy provides sufficient protection of the loan secured by the property located in a special flood hazard area; and

(*iii*) Documented its findings under paragraphs (c)(3)(iii)(D)(*2*)(*i*) and (*ii*) of this section.

(iv) *Exception for mutual aid societies.* Notwithstanding the requirements of paragraph (c)(3)(iii) of this section, a member bank may accept a private policy issued by a mutual aid society in satisfaction of the flood insurance purchase requirement under paragraph (c)(1) of this section if:

(A) The Board has determined that such types of policies qualify as flood insurance for purposes of this Act.

(B) The policy meets the amount of coverage for losses and term requirements specified in paragraph (c)(1) of this section;

(C) The policy covers both the mortgagor(s) and the mortgagee(s) as loss payees; and

(D) The member bank has determined that the policy provides sufficient protection of the loan secured by the property located in a special flood hazard area. In making this determination, the member bank must:

(*1*) Verify that the policy is consistent with general safety and soundness principles, such as whether deductibles are reasonable based on the borrower's financial condition;

(*2*) Consider the policy provider's ability to satisfy claims, such as whether the policy provider has a demonstrated record of covering losses; and

(*3*) Document its conclusions.

Federal Deposit Insurance Corporation

12 CFR CHAPTER III

Authority and Issuance

For the reasons set forth in the joint preamble, the Board of Directors of the FDIC proposes to amend part 339 of chapter III of title 12 of the Code of Federal Regulations to read as follows:

PART 339—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

■ 6. The authority citation for part 339 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1819 (Tenth), 5412(b)(2)(C) and 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

■ 7. Section 339.2 is amended by adding the definitions of ''Mutual aid society'', ''Private flood insurance'', and ''SFIP'' in alphabetical order to read as follows:

§ 339.2 Definitions.

* * * * *

Mutual aid society means an organization—

(1) Whose members share a common religious, charitable, educational, or fraternal bond;

(2) That covers losses caused by damage to members' property pursuant to an agreement, including damage caused by flooding, in accordance with this common bond; and

(3) That has a demonstrated history of fulfilling the terms of agreements to cover losses to members' property caused by flooding.

* * * * *

Private flood insurance means an insurance policy that:

(1) Is issued by an insurance company that is:

(i) Licensed, admitted, or otherwise approved to engage in the business of insurance in the State or jurisdiction in which the property to be insured is located, by the insurance regulator of that State or jurisdiction; or

(ii) Recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the State or jurisdiction in which the property to be insured is located in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property;

(2) Provides flood insurance coverage that is at least as broad as the coverage provided under an SFIP, including when considering deductibles, exclusions, and conditions offered by the insurer. For purposes of this part, a policy is at least as broad as the coverage provided under an SFIP if, at a minimum, the policy:

(i) Defines the term ''flood'' to include the events defined as a ''flood'' in an SFIP;

(ii) Covers both the mortgagor(s) and the mortgagee(s) as loss payees;

(iii) Contains the coverage and provisions specified in an SFIP, including those relating to building property coverage; personal property coverage, if purchased by the insured mortgagor(s); other coverages; and the increased cost of compliance;

(iv) Contains deductibles no higher than the specified maximum for the same type of property, and includes similar non-applicability provisions, as under an SFIP, for any total policy coverage amount up to the maximum available under the NFIP at the time the policy is provided to the lender;

(v) Provides coverage for direct physical loss caused by a flood and may exclude other causes of loss identified in an SFIP. Any additional or different exclusions than those in an SFIP may pertain only to coverage that is in addition to the amount and type of coverage that could be provided by an SFIP; and

(vi) May not contain conditions that narrow the coverage provided in an SFIP;

(3) Includes all of the following:

(i) A requirement for the insurer to give written notice 45 days before cancellation or non-renewal of flood insurance coverage to:

(A) The insured; and

(B) The FDIC-supervised institution that made the designated loan secured by the property covered by the flood insurance, or the servicer acting on its behalf;

(ii) Information about the availability of flood insurance coverage under the NFIP;

(iii) A mortgage interest clause similar to the clause contained in an SFIP; and

(iv) A provision requiring an insured to file suit not later than one year after the date of a written denial of all or part of a claim under the policy; and

(4) Contains cancellation provisions that are as restrictive as the provisions contained in an SFIP.

* * * * *

SFIP means, for purposes of §§ 339.2 and 339.3, a standard flood insurance policy issued under the NFIP in effect as of the date the private policy is provided to an FDIC-supervised institution.

* * * * *

■ 8. Section 339.3 is amended by adding paragraph (c) to read as follows:

§ 339.3 Requirement to purchase flood insurance where available.

* * * * *

(c) *Private flood insurance.* (1) *Mandatory acceptance.* An FDIC-supervised institution must accept private flood insurance, as defined in § 339.2, in satisfaction of the flood insurance purchase requirement, provided that the private flood insurance meets the requirement for coverage under paragraph (a) of this section.

(2) *Compliance aid for mandatory acceptance.* A flood insurance policy is deemed to meet the definition of private flood insurance in § 339.2 for purposes of paragraph (a) of this section if:

(i) The policy includes, or is accompanied by, a written summary that demonstrates how the policy meets the definition of private flood insurance in § 339.2 by identifying the provisions of the policy that meet each criterion in the definition, and confirms that the insurer is regulated in accordance with that definition;

(ii) The FDIC-supervised institution verifies in writing that the policy includes the provisions identified by the insurer in the summary provided pursuant to paragraph (c)(2)(i) of this section and that these provisions satisfy the criteria included in the definition; and

(iii) The policy includes the following provision within the policy or as an endorsement to the policy: ''This policy meets the definition of private flood insurance contained in 42 U.S.C. 4012a(b)(7) and the corresponding regulation.''

(3) *Discretionary acceptance.* An FDIC-supervised institution may accept a flood insurance policy issued by a private insurer that is not issued under the NFIP and does not meet the definition of private flood insurance, as defined in § 339.2, in satisfaction of the flood insurance purchase requirement under paragraph (a) of this section, only if the coverage under such flood insurance policy meets the amount and term requirements specified in paragraph (a) of this section, and the policy:

(i) Is issued by an insurer that is licensed, admitted, or otherwise approved to engage in the business of insurance in the State or jurisdiction in which the property to be insured is located by the insurance regulator of that State; or in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property, is issued by a surplus lines insurer recognized, or not disapproved, by the insurance regulator of the State where the property to be insured is located;

(ii) Covers both the mortgagor(s) and the mortgagee(s) as loss payees;

(iii) Provides for cancellation following reasonable notice to the borrower only for reasons permitted by FEMA for an SFIP on the Flood Insurance Cancellation Request/Nullification Form, in any case of non-payment, or when cancellation is mandated pursuant to State law; and

(iv) Either:

(A) Meets the criteria of private flood insurance, as defined in § 339.2, set forth in paragraphs (2)(i) and (iii) through (vi) of this section; or

(B) Provides coverage that is similar to coverage provided under an SFIP, including when considering deductibles, exclusions, and conditions offered by the insurer, and the FDIC-supervised institution has:

(*1*) Compared the private policy with an SFIP to determine the differences between the private policy and an SFIP;

(*2*) Reasonably determined that the private policy provides sufficient protection of the loan secured by the property located in a special flood hazard area; and

(*3*) Documented its findings under paragraphs (c)(3)(iv)(B)(*1*) and (*2*) of this section.

(4) *Exception for mutual aid societies.* Notwithstanding the requirements of paragraph (c)(3) of this section, an FDIC-supervised institution may accept a private policy issued by a mutual aid society in satisfaction of the flood insurance purchase requirement under paragraph (a) of this section if:

(i) The FDIC has determined that such types of policies qualify as flood insurance for purposes of this Act;

(ii) The policy meets the amount of coverage for losses and term requirements specified in paragraph (a) of this section;

(iii) The policy covers both the mortgagor(s) and the mortgagee(s) as loss payees; and

(iv) The FDIC-supervised institution has determined that the policy provides sufficient protection of the loan secured by the property located in a special flood hazard area. In making this determination, the FDIC-supervised institution must:

(A) Verify that the policy is consistent with general safety and soundness principles, such as whether deductibles are reasonable based on the borrower's financial condition;

(B) Consider the policy provider's ability to satisfy claims, such as whether the policy provider has a demonstrated record of covering losses; and

(C) Document its conclusions.

Farm Credit Administration

12 CFR CHAPTER VI

Authority and Issuance

For the reasons set forth in the joint preamble, the FCA proposes to amend part 614 subpart S of chapter VI, title 12 of the Code of Federal Regulations as set forth below:

PART 614—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

■ 9. The authority citation for part 614 is revised to read as follows:

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.19, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.7, 7.8, 7.12, 7.13, 8.0, 8.5 of Pub. L. 92–181, 85 Stat. 583 (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2096, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2207, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279b–1, 2279b–2, 2279f, 2279f–1, 2279aa, 2279aa–5); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

■ 10. Section 614.4925, is amended by adding the definitions of ''mutual aid society'', ''private flood insurance'', and ''SFIP'' in alphabetical order to read as follows:

§ 614.4925 Definitions.

* * * * *

Mutual aid society means an organization:

(1) Whose members share a common religious, charitable, educational, or fraternal bond;

(2) That covers losses caused by damage to members' property pursuant to an agreement, including damage caused by flooding, in accordance with this common bond; and

(3) That has a demonstrated history of fulfilling the terms of agreements to cover losses to members' property caused by flooding.

* * * * *

Private flood insurance means an insurance policy that:

(1) Is issued by an insurance company that is:

(i) Licensed, admitted, or otherwise approved to engage in the business of insurance in the State or jurisdiction in which the property to be insured is located, by the insurance regulator of that State or jurisdiction; or

(ii) Recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the State or jurisdiction in which the property to be insured is located in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property;

(2) Provides flood insurance coverage that is at least as broad as the coverage provided under an SFIP, including when considering deductibles, exclusions, and conditions offered by the insurer. For purposes of this subpart, a policy is at least as broad as the coverage provided under an SFIP if, at a minimum, the policy:

(i) Defines the term ''flood'' to include the events defined as a ''flood'' in an SFIP;

(ii) Covers both the mortgagor(s) and the mortgagee(s) as loss payees;

(iii) Contains the coverage and provisions specified in an SFIP, including those relating to building property coverage; personal property coverage, if purchased by the insured mortgagor(s); other coverages; and the increased cost of compliance;

(iv) Contains deductibles no higher than the specified maximum for the same type of property, and includes similar non-applicability provisions, as under an SFIP, for any total policy coverage amount up to the maximum available under the NFIP at the time the policy is provided to the lender;

(v) Provides coverage for direct physical loss caused by a flood and may exclude other causes of loss identified in an SFIP. Any additional or different exclusions than those in an SFIP may pertain only to coverage that is in addition to the amount and type of coverage that could be provided by an SFIP; and

(vi) May not contain conditions that narrow the coverage provided in an SFIP;

(3) Includes all of the following:

(i) A requirement for the insurer to give written notice 45 days before cancellation or non-renewal of flood insurance coverage to:

(*A*) The insured; and

(*B*) The System institution that made the designated loan secured by the property covered by the flood insurance, or the servicer acting on its behalf;

(ii) Information about the availability of flood insurance coverage under the NFIP;

(iii) A mortgage interest clause similar to the clause contained in an SFIP; and

(iv) A provision requiring an insured to file suit not later than one year after the date of a written denial of all or part of a claim under the policy; and

(4) Contains cancellation provisions that are as restrictive as the provisions contained in an SFIP.

* * * * *

SFIP means, for purposes of §§ 614.4925 and 614.4930, a standard flood insurance policy issued under the NFIP in effect as of the date the private policy is provided to a System institution.

* * * * *

■ 11. Section 614.4930 is amended by adding paragraph (c) to read as follows:

§ 614.4930 Requirement to purchase flood insurance where available.

* * * * *

(c) *Private flood insurance*—(1) *Mandatory acceptance.* A System institution must accept private flood insurance, as defined in § 614.4925, in satisfaction of the flood insurance purchase requirement, provided that the private flood insurance meets the requirement for coverage under paragraph (a) of this section.

(2) *Compliance aid for mandatory acceptance.* A flood insurance policy is deemed to meet the definition of private flood insurance in § 614.4925 for purposes of paragraph (a) of this section if:

(i) The policy includes, or is accompanied by, a written summary that demonstrates how the policy meets the definition of private flood insurance in § 614.4925 by identifying the provisions of the policy that meet each criterion in the definition, and confirms that the insurer is regulated in accordance with that definition;

(ii) The System institution verifies in writing that the policy includes the provisions identified by the insurer in the summary provided pursuant to paragraph (c)(2)(i) of this section and that these provisions satisfy the criteria included in the definition; and

(iii) The policy includes the following provision within the policy or as an endorsement to the policy: ''This policy meets the definition of private flood insurance contained in 42 U.S.C. 4012a(b)(7) and the corresponding regulation.''

(3) *Discretionary acceptance.—In general.* A System institution may accept a flood insurance policy issued by a private insurer that is not issued under the NFIP and does not meet the definition of private flood insurance, as defined in § 614.4925, in satisfaction of the flood insurance purchase requirement under paragraph (a) of this section, only if the coverage under such flood insurance policy meets the amount and term requirements specified in paragraph (a) of this section, and the policy:

(i) Is issued by an insurer that is licensed, admitted, or otherwise approved to engage in the business of insurance in the State or jurisdiction in which the property to be insured is located by the insurance regulator of that State; or in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property, is issued by a surplus lines insurer recognized, or not disapproved, by the insurance regulator of the State where the property to be insured is located;

(ii) Covers both the mortgagor(s) and the mortgagee(s) as loss payees;

(iii) Provides for cancellation following reasonable notice to the borrower only for reasons permitted by FEMA for an SFIP on the Flood Insurance Cancellation Request/Nullification Form, in any case of non-payment, or when cancellation is mandated pursuant to State law; and

(iv) Either:

(A) Meets the criteria set forth in paragraphs (2)(i) and (iii) through (vi) of the definition of private flood insurance in § 614.4925; or

(B) Provides coverage that is similar to coverage provided under an SFIP, including when considering deductibles, exclusions, and conditions offered by the insurer, and the System institution has:

(*1*) Compared the private policy with an SFIP to determine the differences between the private policy and an SFIP;

(*2*) Reasonably determined that the private policy provides sufficient protection of the loan secured by the property located in a special flood hazard area; and

(*3*) Documented its findings under paragraphs (c)(3)(iv)(A)(B)(1) and (B)(2) of this section.

(4) *Exception for mutual aid societies.* Notwithstanding the requirements of paragraph (c)(3) of this section, a System institution may accept a private policy issued by a mutual aid society in satisfaction of the flood insurance purchase requirement under paragraph (a) of this section if:

(i) The FCA has determined that such types of policies qualify as flood insurance for purposes of the 1968 Act;

(ii) The policy meets the amount of coverage for losses and term requirements specified in paragraph (a) of this section;

(iii) The policy covers both the mortgagor(s) and the mortgagee(s) as loss payees; and

(iv) The System institution has determined that the policy provides sufficient protection of the loan secured by the property located in a special flood hazard area. In making this determination, the System institution must:

(A) Verify that the policy is consistent with general safety and soundness principles, such as whether deductibles are reasonable based on the borrower's financial condition;

(B) Consider the policy provider's ability to satisfy claims, such as whether the policy provider has a demonstrated record of covering losses; and

(C) Document its conclusions.

National Credit Union Administration

12 CFR CHAPTER VII

Authority and Issuance

For the reasons set forth in the joint preamble, the NCUA Board proposes to amend part 760 of chapter VII of title 12 of the Code of Federal Regulations to read as follows:

PART 760—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

■ 12. The authority citation for part 760 continues to read as follows:

Authority: 12 U.S.C. 1757, 1789; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

■ 13. Section 760.2 is amended by adding the definitions of ''Mutual aid society'', ''Private flood insurance'', and ''SFIP'' in alphabetical order to read as follows:

§ 760.2 Definitions.

* * * * *

Mutual aid society means an organization—

(1) Whose members share a common religious, charitable, educational, or fraternal bond;

(2) That covers losses caused by damage to members' property pursuant to an agreement, including damage caused by flooding, in accordance with this common bond; and

(3) That has a demonstrated history of fulfilling the terms of agreements to cover losses to members' property caused by flooding.

* * * * *

Private flood insurance means an insurance policy that:

(1) Is issued by an insurance company that is:

(i) Licensed, admitted, or otherwise approved to engage in the business of insurance in the State or jurisdiction in which the property to be insured is located, by the insurance regulator of that State or jurisdiction; or

(ii) Recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the State or jurisdiction in which the property to be insured is located in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property;

(2) Provides flood insurance coverage that is at least as broad as the coverage provided under an SFIP, including when considering deductibles, exclusions, and conditions offered by the insurer. For purposes of this part, a policy is at least as broad as the coverage provided under an SFIP if, at a minimum, the policy:

(i) Defines the term ''flood'' to include the events defined as a ''flood'' in an SFIP;

(ii) Covers both the mortgagor(s) and the mortgagee(s) as loss payees;

(iii) Contains the coverage and provisions specified in an SFIP, including those relating to building property coverage; personal property coverage, if purchased by the insured mortgagor(s); other coverages; and the increased cost of compliance;

(iv) Contains deductibles no higher than the specified maximum for the same type of property, and includes similar non-applicability provisions, as under an SFIP, for any total policy coverage amount up to the maximum available under the NFIP at the time the policy is provided to the lender;

(v) Provides coverage for direct physical loss caused by a flood and may exclude other causes of loss identified in an SFIP. Any additional or different exclusions than those in an SFIP may pertain only to coverage that is in addition to the amount and type of coverage that could be provided by an SFIP; and

(vi) May not contain conditions that narrow the coverage provided in an SFIP;

(3) Includes all of the following:

(i) A requirement for the insurer to give written notice 45 days before cancellation or non-renewal of flood insurance coverage to:

(A) The insured; and

(B) The credit union that made the designated loan secured by the property covered by the flood insurance, or the servicer acting on its behalf;

(ii) Information about the availability of flood insurance coverage under the NFIP;

(iii) A mortgage interest clause similar to the clause contained in an SFIP; and

(iv) A provision requiring an insured to file suit not later than one year after the date of a written denial of all or part of a claim under the policy; and

(4) Contains cancellation provisions that are as restrictive as the provisions contained in an SFIP.

* * * * *

SFIP means, for purposes of §§ 760.2 and 760.3, a standard flood insurance policy issued under the NFIP in effect as of the date the private policy is provided to a credit union.

* * * * *

■ 14. Section 760.3 is amended by adding paragraph (c) to read as follows:

§ 760.3 Requirement to purchase flood insurance where available.

* * * * *

(c) *Private flood insurance*—(1) *Mandatory acceptance.* A credit union must accept private flood insurance, as defined in § 760.2, in satisfaction of the flood insurance purchase requirement, provided that the private flood insurance meets the requirement for coverage under paragraph (a) of this section.

(2) *Compliance aid for mandatory acceptance.* A flood insurance policy is deemed to meet the definition of private flood insurance in § 760.2 for purposes of paragraph (a) of this section if:

(i) The policy includes, or is accompanied by, a written summary that demonstrates how the policy meets the definition of private flood insurance in § 760.2 by identifying the provisions of the policy that meet each criterion in the definition, and confirms that the insurer is regulated in accordance with that definition;

(ii) The credit union verifies in writing that the policy includes the provisions identified by the insurer in the summary provided pursuant to paragraph (c)(2)(i) of this section and that these provisions satisfy the criteria included in the definition; and

(iii) The policy includes the following provision within the policy or as an endorsement to the policy: ''This policy meets the definition of private flood insurance contained in 42 U.S.C. 4012a(b)(7) and the corresponding regulation.''

(3) *Discretionary acceptance.* A credit union may accept a flood insurance policy issued by a private insurer that is not issued under the NFIP and does not meet the definition of private flood insurance, as defined in § 760.2, in satisfaction of the flood insurance purchase requirement under paragraph (a) of this section, only if the coverage under such flood insurance policy

meets the amount and term requirements specified in paragraph (a) of this section, and the policy:

(i) Is issued by an insurer that is licensed, admitted, or otherwise approved to engage in the business of insurance in the State or jurisdiction in which the property to be insured is located by the insurance regulator of that State; or in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property, is issued by a surplus lines insurer recognized, or not disapproved, by the insurance regulator of the State where the property to be insured is located;

(ii) Covers both the mortgagor(s) and the mortgagee(s) as loss payees;

(iii) Provides for cancellation following reasonable notice to the borrower only for reasons permitted by FEMA for an SFIP on the Flood Insurance Cancellation Request/Nullification Form, in any case of non-payment, or when cancellation is mandated pursuant to State law; and

(iv) Either:

(A) Meets the criteria set forth in paragraphs (2)(i) and (iii) through (vi) of the definition of private flood insurance in § 760.2; or

(B) Provides coverage that is similar to coverage provided under an SFIP, including when considering deductibles, exclusions, and conditions offered by the insurer, and the credit union has:

(*1*) Compared the private policy with an SFIP to determine the differences between the private policy and an SFIP;

(*2*) Reasonably determined that the private policy provides sufficient protection of the loan secured by the property located in a special flood hazard area; and

(*3*) Documented its findings under paragraphs (c)(3)(iv)(B)(*1*) and (*2*) of this section.

(4) *Exception for mutual aid societies.* Notwithstanding the requirements of paragraph (c)(3) of this section, a credit union may accept a private policy issued by a mutual aid society in satisfaction of the flood insurance purchase requirement under paragraph (a) of this section if:

(i) The National Credit Union Administration has determined that such types of policies qualify as flood insurance for purposes of this Act;

(ii) The policy meets the amount of coverage for losses and term requirements specified in paragraph (a) of this section;

(iii) The policy covers both the mortgagor(s) and the mortgagee(s) as loss payees; and

(iv) The credit union has determined that the policy provides sufficient protection of the loan secured by the property located in a special flood hazard area. In making this determination, the credit union must:

(A) Verify that the policy is consistent with general safety and soundness principles, such as whether deductibles are reasonable based on the borrower's financial condition;

(B) Consider the policy provider's ability to satisfy claims, such as whether the policy provider has a demonstrated record of covering losses; and

(C) Document its conclusions.

Dated: October 19, 2016.

Thomas J. Curry,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, October 12, 2016.

Robert deV. Frierson,

Secretary of the Board.

By order of the Board of Directors of the Federal Deposit Insurance Corporation.

Dated at Washington, DC, this 19th day of October, 2016.

Robert E. Feldmanm

Executive Secretary,

By order of the Board of the Farm Credit Administration.

Dated at McLean, VA, this 14th day of October, 2016.

Dale L. Aultman,

Secretary.

By order of the Board of the National Credit Union Administration.

Dated at Alexandria, VA, this 27th day of October, 2016.

Gerard S. Poliquin,

Secretary of the Board.

[FR Doc. 2016–26411 Filed 11–4–16; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 7535–01–P; 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–9304; Directorate Identifier 2016–NM–028–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Bombardier, Inc. Model BD–700–1A10 and BD–700–1A11 airplanes. This proposed AD was prompted by reports of aileron and rudder control cables which may have tensions that are beyond allowable limits. This proposed AD would require revising the maintenance or inspection program to incorporate certification maintenance requirement tasks that introduce functional tests of the control cable tension. We are proposing this AD to detect and correct out-of-tolerance tension in the control cables, which, with certain system failures and environmental conditions, could result in reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by December 22, 2016.

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

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

For service information identified in this NPRM, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone: 514–855–5000; fax: 514–855–7401; email: *thd.crj@aero.bombardier.com;* Internet: *http://www.bombardier.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9304; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone: 800–647–5527) is in the **ADDRESSES** section. Comments will

be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–228–7318; fax: 516–794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2016–9304; Directorate Identifier 2016–NM–028–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2016–06R1, dated July 25, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc. Model BD–700–1A10 and BD–700–1A11 airplanes. The MCAI states:

> Recent in-service inspections have shown that aileron and rudder control cables may have tensions beyond allowable limits. Review of the technical documentation found that there are no maintenance tasks to detect and rectify out-of-tolerance tensions on these cables. Out of tolerance cables in combinations with certain system failures and environmental conditions could result in the degraded aircraft controllability.
>
> * * * [This Canadian] AD was issued to mandate a revision to the approved maintenance schedule [maintenance or inspection program, as applicable] to introduce cable tension check [*e.g.,* functional test,] as [certification maintenance requirement] tasks.

You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9304.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (j)(1) of this proposed AD. The request should include a description of changes to the required actions that will ensure the continued operational safety of the airplane.

Related Service Information Under 1 CFR Part 51

We reviewed the following Bombardier, Inc. service information:

- Temporary Revision (TR) 5–2–10, dated November 24, 2015, to Part 2, Section 5–10–40, of Bombardier Global Express XRS BD–700 Time Limits/Maintenance Checks.
- TR 5–2–15, dated November 24, 2015, to Part 2, Section 5–10–40, of Bombardier Global 6000 GL 6000 Time Limits/Maintenance Checks.
- TR 5–2–15, dated November 24, 2015, to Part 2, Section 5–10–40, of Bombardier Global 5000 GL 5000 Featuring Global Vision Flight Deck—Time Limits/Maintenance Checks.
- TR 5–2–16, dated November 24, 2015, to Part 2, Section 5–10–40, of Bombardier Global 5000 BD–700 Time Limits/Maintenance Checks.
- TR 5–2–47, dated November 24, 2015, to Part 2, Section 5–10–40, of Bombardier Global Express BD–700 Time Limits/Maintenance Checks.

The service information identifies airworthiness limitation tasks for functional tests of the cable tension of the aileron and rudder control cables. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This AD

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

Costs of Compliance

We estimate that this proposed AD affects 60 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
Maintenance or Inspection Program Revision	1 work-hours × $85 per hour = $85 per airplane.	$0	$85	$5,100

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will

not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

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):

Bombardier, Inc.: Docket No. FAA–2016–9304; Directorate Identifier 2016–NM–028–AD.

(a) Comments Due Date

We must receive comments by December 22, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model BD–700–1A10 and BD–700–1A11 airplanes, certificated in any category, serial numbers 9002 through 9743 inclusive, and 9998.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight controls.

(e) Reason

This AD was prompted by reports of aileron and rudder control cables which may have tensions that are beyond allowable limits. We are issuing this AD to detect and correct out-of-tolerance tension in the control cables, which, with certain system failures and environmental conditions, could result in reduced controllability of the airplane.

(f) Compliance

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

(g) Time Limits/Maintenance Checks (TLMC)—Maintenance or Inspection Program Revision

Within 30 days after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate certification maintenance requirement (CMR) tasks 27–11–35–101, 27–11–35–102, and 27–21–27–101 (for functional tests of the control cable tension) as specified in the applicable service information in paragraphs (g)(1) through (g)(5) of this AD. The initial compliance time for doing the tasks is specified in paragraph (h) of this AD. When the applicable temporary revision (TR) has been included in general revisions of the TLMC, the general revisions may be inserted in the maintenance or inspection program, and the applicable TR may be removed, provided the relevant information in the general revision is identical to that in the applicable TR.

(1) TR 5–2–10, dated November 24, 2015, to Part 2, Section 5–10–40, of Bombardier Global Express XRS BD–700 Time Limits/Maintenance Checks (for Model BD–700–1A10 airplanes).

(2) TR 5–2–15, dated November 24, 2015, to Part 2, Section 5–10–40, of Bombardier Global 6000 GL 6000 Time Limits/Maintenance Checks (for Model BD–700–1A10 airplanes).

(3) TR 5–2–47, dated November 24, 2015, to Part 2, Section 5–10–40, of Bombardier Global Express BD–700 Time Limits/Maintenance Checks (for Model BD–700–1A10 airplanes).

(4) TR 5–2–15, dated November 24, 2015, to Part 2, Section 5–10–40, of Bombardier Global 5000 GL 5000 Featuring Global Vision Flight Deck—Time Limits/Maintenance Checks (for Model BD–700–1A11 airplanes).

(5) TR 5–2–16, dated November 24, 2015, to Part 2, Section 5–10–40, of Bombardier Global 5000 BD–700 Time Limits/Maintenance Checks (for Model BD–700–1A11 airplanes).

(h) Initial Compliance Times for CMR Tasks

The initial compliance times for doing the CMR tasks identified in paragraph (g) of this AD are at the applicable times specified in paragraphs (h)(1), (h)(2), and (h)(3) of this AD, or within 30 days after the effective date of this AD, whichever occurs later.

(1) For airplanes having serial numbers (S/Ns) 9002 through 9694 inclusive, and 9998: Within 15 months after the effective date of this AD; or within 30 months since the date of issuance of the original Canadian airworthiness certificate or the date of issuance of the original Canadian export certificate of airworthiness; whichever occurs first.

(2) For airplanes having S/Ns 9695 through 9743 inclusive that have had aileron and/or rudder control cable replacement and the aileron and rudder control cables were rigged as specified in any applicable Bombardier aircraft maintenance manual (AMM) revision earlier than the revision date shown in paragraphs (h)(2)(i) through (h)(2)(v) of this AD or the AMM revision date is unknown: Within 15 months after the effective date of this AD; or within 30 months since the date of issuance of the original Canadian airworthiness certificate or the date of issuance of the original Canadian export certificate of airworthiness; whichever occurs first.

(i) GL 700 AMM, Revision 67, dated August 6, 2015 (for Model BD–700–1A10 airplanes).

(ii) GL XRS AMM, Revision 45, dated August 6, 2015 (for Model BD–700–1A10 airplanes).

(iii) GL 6000 AMM, Revision 15, dated August 6, 2015 (for Model BD–700–1A10 airplanes).

(iv) GL 5000 AMM, Revision 48, August 6, 2015 (for Model BD–700–1A11 airplanes).

(v) GL 5000 GVFD AMM, Revision 15, August 6, 2015 (for Model BD–700–1A11 airplanes).

(3) For airplanes other than those identified in paragraphs (h)(1) and (h)(2) of this AD: Within 30 months since the date of issuance of the original Canadian airworthiness certificate or the date of issuance of the original Canadian export certificate of airworthiness.

(i) No Alternative Actions and Intervals

Except as provided by paragraph (h) of this AD, after the maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j)(1) of this AD.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO, ANE–170, 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 ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–228–7300; fax: 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE–170, FAA; or TCCA; or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2016–06 R1, dated July 25, 2016, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9304.

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone: 514–855–5000; fax: 514–855–7401; email: *thd.crj@aero.bombardier.com;* Internet: *http://www.bombardier.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on October 26, 2016.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–26520 Filed 11–4–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–9345; Directorate Identifier 2016–CE–028–AD]

RIN 2120–AA64

Airworthiness Directives; United Instruments, Inc. Series Altimeters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain United Instruments, Inc. 5934 series altimeters that were manufactured between January 2015 and February 2016 and installed in airplanes and helicopters. This proposed AD was prompted by reports of certain altimeters displaying higher than actual altitude due to a slow diaphragm leak. This proposed AD would require replacing the affected altimeters. We are issuing this proposed AD to prevent display of misleading altitude data, which could result in inadvertent flight into terrain.

DATES: We must receive comments on this proposed AD by December 22, 2016.

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

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

For service information identified in this proposed AD, contact United Instruments, Inc., 3625 Comotara Avenue, Wichita, KS 67226; telephone (316) 636–9203; fax: (316) 636–9243; email: *customerservice@unitedinst.com;* Internet: *www.unitedinst.com.* You may review 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.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9345; 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: Les Lyne, Aerospace Engineer, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4190; fax: (316) 946–4107; email: *leslie.lyne@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2016–9345; Directorate Identifier 2016–CE–028–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 received a report that certain United Instruments, Inc. 5934 series altimeters that were manufactured between January 2015 and February 2016 may display higher than actual altitude. These altimeters are susceptible to developing a slow diaphragm leak, which would affect the accuracy of the altimeters. It has been determined that insufficient removal of chemical substance on the diaphragm assembly during the production process of the altimeter caused the misleading display of altitude data. This condition, if not corrected, could result in display of misleading altitude data, which could result in inadvertent flight into terrain.

Related Service Information Under 1 CFR Part 51

We reviewed United Instruments, Inc. Service Bulletin No. 13, dated March 25, 2016. The service bulletin describes procedures for replacing the nonconforming altimeters. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD affects 1,351 altimeters as installed in airplanes and helicopters 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
Replace altimeter	1 work-hour × $85 per hour = $85	$1,600	$1,685	$2,276,435

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

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):

United Instruments, Inc.: Docket No. FAA–2016–9345; Directorate Identifier 2016–CE–028–AD.

(a) Comments Due Date

We must receive comments by December 12, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to United Instruments, Inc. 5934 series altimeters that were manufactured between January 2015 and February 2016 and installed in airplanes and helicopters.

(1) The specific affected serial number altimeters can be found in United Instruments, Inc. Service Bulletin No. 13, dated March 25, 2016, which can be found on the Internet at *http://www.unitedinst.com/ServiceBulletinNo13/.*

(2) Altimeters that have been corrected by United Instruments, Inc. following Service Bulletin No. 13, dated March 25, 2016, are not affected by this AD and no further action is necessary.

(3) Altimeters that have been corrected by United Instruments, Inc. can be identified by a yellow dot, approximately ¼ inch (6 mm) in diameter, located approximately 1 inch (25 mm) to the left side of the nameplate. The corrected altimeters will also have a letter ''M,'' approximately ⅛ inch (3mm) high, metal stamped on the nameplate after the name ''ALTIMETER.''

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 44, Cabin Systems.

(e) Unsafe Condition

This AD was prompted by reports of certain altimeters displaying higher than actual altitude due to a slow diaphragm leak. This AD requires replacing the affected altimeters. We are issuing this AD to prevent display of misleading altitude data, which could result in inadvertent flight into terrain.

(f) Compliance

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

(g) Replacement

Within the next 12 months after the effective date of this AD, replace any affected altimeter with a serviceable part following United Instruments, Inc. Service Bulletin No. 13, dated March 25, 2016.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Wichita 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) 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.

(i) Related Information

(1) For more information about this AD, contact Les Lyne, Aerospace Engineer, Wichita ACO, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4190; fax: (316) 946–4107; email: *leslie.lyne@faa.gov.*

(2) For service information identified in this AD, contact United Instruments, Inc., 3625 Comotara Avenue, Wichita, KS 67226; telephone (316) 636–9203; fax: (316) 636–9243; email: *customerservice@unitedinst.com;* Internet: *www.unitedinst.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.

Issued in Kansas City, Missouri, on November 1, 2016.

Pat Mullen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–26807 Filed 11–4–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA– 2016–9305; Directorate Identifier 2016–NM–073–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2012–22–12, for all Airbus Model A330–243, –243F, –341, –342, and –343 airplanes. AD 2012–22–12 currently requires inspecting piccolo tubes, piccolo tube mount links, the aft side of the forward bulkhead, and outer boundary angles (OBAs) for cracks, fractures, and broken links, and doing corrective actions if necessary. Since we issued AD 2012–22–12, we have received reports of loose and missing attachment rivets of the inner boundary angles (IBA) and OBA of the forward bulkhead. This proposed AD would retain certain requirements of AD 2012–22–12, and add repetitive inspections for pulled, loose, and missing attachment rivets of the IBA and OBA of the forward bulkhead, and related investigative and corrective actions if necessary. We are proposing this AD to detect and correct degraded structural integrity of the engine nose cowl, which in the case of forward bulkhead damage in conjunction with a broken piccolo tube, could lead to damage to the engine and operation in icing conditions with reduced thermal anti-ice (TAI) performance.

DATES: We must receive comments on this proposed AD by December 22, 2016.

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

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

For Airbus service information identified in this NPRM, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330–A340@airbus.com;* Internet *http://www.airbus.com.*

For Rolls-Royce service information identified in this NPRM, contact Rolls-Royce Plc, Technical Publications, P.O. Box 31, Derby, DE24 8BJ, United Kingdom; telephone 44 (0) 1332 245882; fax 44 (0) 1332 249936; Internet *http://www.Rolls-Royce.com.*

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9305; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2016–9305; Directorate Identifier 2016–NM–073–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

On October 26, 2012, we issued AD 2012–22–12, Amendment 39–17248 (77 FR 67263, November 9, 2012) (''AD 2012–22–12''). AD 2012–22–12 requires actions intended to address an unsafe condition on all Airbus Model 330–243, –243F, –341, –342, and –343 airplanes.

Since we issued AD 2012–22–12, we have received reports of loose or missing attachment rivets of the IBA and OBA of the forward bulkhead.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive, 2016–0086R1, dated May 13, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus Model 330–243, –243F, –341, –342, and –343 airplanes. The MCAI states:

During shop visit, cracks were found in several primary structural parts of Rolls Royce (RR) Trent 700 engine air intake cowls, specifically in the forward bulkhead web, web stiffeners and outer boundary angles (OBA). In addition, several attachment links were found severely worn, and some became detached. In two cases, the thermal anti-ice (TAI) piccolo tube was found fractured. Investigation results show that the cracks are most likely due to acoustic excitation and vibration.

A broken piccolo tube, if not detected and corrected, in conjunction with forward air intake cowl bulkhead damage, could lead to in-flight detachment of the outer barrel, possibly resulting in damage to the engine or reduced control of the aeroplane.

To address this potential unsafe condition, Airbus issued Service Bulletin (SB) A330–71–3025, making reference to RR SB RB.211–71–AG416, to provide inspection instructions, and, depending on findings, accomplishment of applicable corrective action(s).

Consequently, EASA issued AD 2011–0062 [*http://ad.easa.europa.eu/blob/easa_ad_2011_0062_superseded.pdf/AD_2011-0062_1*] [which corresponds to FAA AD 2012–22–12] to require repetitive special detailed inspections (SDI) [borescope] of the piccolo tube and affected mount links, the aft side of forward bulkhead, inner boundary angles (IBA) and OBA of the RR Trent 700 air intake cowl assemblies, and, depending on findings, accomplishment of applicable corrective action(s).

Since EASA AD 2011–0062 was issued, some occurrences were reported of finding attachment rivets of the IBA and OBA either pulled, loose, or missing during inspection. It was determined that the affected IBA and OBA rivets may not have been previously inspected if operators accomplished the required inspection in accordance with the instructions of RR SB RB.211–71–AG416 at original issue.

To address this potentially missed inspection, Airbus published SB A330–71–3033, providing instructions for a one-time detailed inspection of the IBA and OBA attachment rivets, to be accomplished if the previous inspection was accomplished using the instructions of RR SB RB.211–71–AG416 at original issue. Airbus also published SB A330–71–3025 Revision 2, adding an inspection of the IBA and OBA attachment rivets, to be used if the previous inspection was accomplished using RR SB RB.211–71–AG416 at issue 1 or later. Airbus also published SB A330–71–3032 to introduce a modification (mod) that would eliminate the need for repetitive inspections.

For the reasons described above, this [EASA] AD partially retains the requirements of EASA AD 2011–0062, which is superseded, and requires an additional [special] detailed inspection [borescope] of IBA and OBA forward bulkhead attachment rivets. This [EASA] AD also introduces an optional terminating action (Airbus mod 204615, embodied in production, which can be embodied in service with Airbus SB A330–71–3032) for the repetitive inspections required by this [EASA] AD.

This [EASA] AD is revised to improve clarity, including Airbus and RR SB references and inserting Notes to identify the Part Numbers (P/N) of the affected engine air intake nose cowl assemblies.

Related investigative actions include inspecting for cracked or fractured piccolo tubes and for broken piccolo tube links. Corrective actions include replacing the engine air intake cowl assembly and repair of pulled, loose, or missing rivets.

The compliance times for the related investigative and corrective actions range from before further flight to within 100 flight cycles, depending on the findings of the inspections.

The repetitive inspection interval for the IBA, OBA, and forward bulkhead varies depending on inspection findings, and ranges between 200 and 5,000 flight cycles. The repetitive inspection interval for the piccolo tubes and links is 2,500 flight cycles.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9305.

Related Service Information Under 1 CFR Part 51

Airbus has issued Service Bulletin A330–71–3025, Revision 02, including Appendices 01 and 02, dated December 9, 2015. This service information describes procedures for doing inspections of the piccolo tube and mount links, the aft side of the forward bulkhead, the IBA, OBA, and the forward bulkhead on the engine air intake cowl assemblies; and related investigative and corrective actions.

Airbus has issued Service Bulletin A330–71–3032, dated December 10, 2014. This service information describes procedures for doing a modification that improves the air intake primary structure and adds a new piccolo tube supporting structure on the engine air intake cowl assemblies.

Airbus has issued Service Bulletin A330–71–3033, dated December 14, 2015. This service information describes procedures for doing an inspection for pulled, loose, and missing attachment rivets of the IBA and OBA of the forward bulkhead of the forward bulkhead, and corrective actions.

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

FAA's Determination and Requirements of This Proposed AD

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

Costs of Compliance

We estimate that this proposed AD affects 47 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspections (new proposed action)	12 work-hours × $85 per hour = $1,020 per inspection cycle.	$0	$1,020 per inspection cycle	$47,940 per inspection cycle.

ESTIMATED COSTS FOR OPTIONAL ACTIONS

Action	Labor cost	Parts cost	Cost per product
Modification	Up to 142 work-hours × $85 per hour = $12,070	[1]	Up to $12,070.

[1] We have received no definitive data that would enable us to provide material cost estimates for the optional actions specified in this proposed AD.

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Repairs	16 work-hours × $85 per hour = $1,360	[2]	$1,360

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2012–22–12, Amendment 39–17248 (77 FR 67263, November 9, 2012), and adding the following new AD: **Airbus:** Docket No. FAA–2016–9305; Directorate Identifier 2016–NM–073–AD.

(a) Comments Due Date

We must receive comments by December 22, 2016.

(b) Affected ADs

This AD replaces AD 2012–22–12, Amendment 39–17248 (77 FR 67263, November 9, 2012) (''AD 2012–22–12'').

(c) Applicability

This AD applies to Airbus Model A330–243, –243F, –341, –342, and –343 airplanes, certificated in any category, all serial numbers.

(d) Subject

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

(e) Reason

This AD was prompted by reports of cracking of air intake cowls on Rolls-Royce Trent engines, worn and detached attachment links, and fractured thermal anti-ice (TAI) piccolo tubes, and loose, or missing attachment rivets of the inner boundary angles (IBA) and the outer boundary angles (OBA) of the forward bulkhead. We are issuing this AD to detect and correct degraded structural integrity of the engine nose cowl, which in the case of forward bulkhead damage in conjunction with a broken piccolo tube, could lead to damage to the engine and operation in icing conditions with reduced thermal anti-ice (TAI) performance.

(f) Compliance

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

(g) Affected Engine Air Intake Nose Cowl Assemblies

The engine air intake nose cowl assemblies affected by this AD have part number (P/N) SJ30020, P/N SJ30361, P/N SJ30687, P/N SJ30810, and P/N SJ30811, as specified in Rolls-Royce Service Bulletin RB.211–71–H205, dated July 7, 2014.

(1) The engine air intake nose cowl assemblies having P/N SJ30020, P/N SJ30361, and P/N SJ30687 can be modified (reworked and re-identified as P/N SJ30810 (for P/N SJ30020, P/N SJ30361) and P/N SJ30811 (for P/N SJ30687)), as specified in Rolls-Royce Service Bulletin RB.211–71–H205, dated July 7, 2014.

(2) The engine air intake nose cowl assemblies having P/N SJ30810 and P/N SJ30811 can be modified (reworked and re-identified as P/N SJ30820 and P/N SJ30821, respectively), as specified in Rolls-Royce Service Bulletin RB.211–71–H847, dated December 2, 2014.

(h) Inspections, Related Investigative Actions, and Corrective Actions

For airplanes in pre-Airbus Modification 204615 and pre-Airbus Service Bulletin A330–71–3032 configuration: At the applicable times specified in paragraph (h)(1) or (h)(2) of this AD, do a special detailed inspection of the piccolo tube and affected mount links, the aft side of the forward bulkhead, and the IBA and OBA of the affected engine air intake cowl assemblies specified in paragraph (g) of this AD; and do all applicable related investigative and corrective actions; in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–71–3025, Revision 02, including Appendices 01 and 02, dated December 9, 2015, except as required by paragraph (i) of this AD. Do all applicable related investigative and corrective actions at the applicable time specified in paragraph 1.E., ''Compliance,'' of Airbus Service Bulletin A330–71–3025, Revision 02, including Appendices 01 and 02, dated December 9, 2015. Repeat the inspections of the piccolo tube and affected mount links, the aft side of the forward bulkhead, and the IBA and OBA of the engine air intake cowl assemblies thereafter at the applicable intervals specified in paragraph 1.E., ''Compliance,'' of Airbus Service Bulletin A330–71–3025, Revision 02, including Appendices 01 and 02, dated December 9, 2015. Accomplishment of corrective actions does not constitute terminating action for the repetitive inspections required by this paragraph.

(1) For any engine air intake cowl assembly that has accumulated fewer than 5,000 flight cycles since its first installation on an airplane as of the effective date of this AD: Inspect within 24 months after the engine air intake cowl assembly has accumulated 5,000 total flight cycles.

(2) For any engine air intake cowl assembly that has accumulated 5,000 or more flight cycles since its first installation on an airplane as of the effective date of this AD: Inspect within 24 months after the effective date of this AD.

(i) Service Information Exception

Where Airbus Service Bulletin A330–71–3025, Revision 02, including Appendices 01 and 02, dated December 9, 2015, specifies to contact Bombardier Aerospace-Shorts for instructions, before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA).

(j) Optional Terminating Action

Modification of an airplane in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–71–3032, dated December 10, 2014, constitutes terminating action for the repetitive inspections required by paragraph (h) of this AD for the modified airplane only.

(k) Parts Installation Limitation

As of the effective date of this AD, any pre-Airbus modification 204615 part may be installed on any airplane provided that, at

the earlier of the applicable times specified in paragraphs (h)(1) and (h)(2) of this AD following installation, the actions required by paragraph (h) of this AD have been accomplished on the pre-Airbus Modification 204615 part.

(l) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (h) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A330–71–3025, dated January 10, 2011; or Airbus Service Bulletin A330–71–3025, Revision 01, dated October 24, 2012; provided that, within 1,050 flight cycles after the effective date of this AD, a special detailed inspection for pulled, loose, and missing attachment rivets of the IBA and OBA of the forward bulkhead is accomplished; and all applicable corrective actions are done; in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–71–3033, dated December 14, 2015. Do all applicable corrective actions before further flight. Accomplishment of corrective actions does not constitute terminating action for the repetitive inspections required by paragraph (h) of this AD.

(m) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.*

(i) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(ii) AMOCs approved previously in accordance with 2012–22–12 are not approved as AMOCs with this AD.

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

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

(n) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2016–0086R1, dated May 13, 2016, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9305.

(2) For Airbus service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.*

(3) For Rolls-Royce service information identified in this AD, contact Rolls-Royce Plc, Technical Publications, P.O. Box 31, Derby, DE24 8BJ, United Kingdom; telephone 44 (0) 1332 245882; fax 44 (0) 1332 249936; Internet *http://www.Rolls-Royce.com.*

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

Issued in Renton, Washington, on October 28, 2016.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–26521 Filed 11–4–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–7115; Airspace Docket No. 15–ANM–30]

Proposed Amendment of Class E Airspace, Trinidad, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E surface area airspace, and Class E airspace extending upward from 700 feet above the surface, at Perry Stokes Airport, Trinidad, CO. Airspace redesign is necessary to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures at the airport due to the decommissioning of the Trinidad Non-Directional Radio Beacon (NDB) and cancellation of associated approaches. This action would ensure the safety, efficiency, and management of Instrument Flight Rules (IFR) operations at the airport. Additionally, the airport's geographic coordinates would be updated to match the FAA's aeronautical database.

DATES: Comments must be received on or before December 22, 2016.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1–800–647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2015–7115; Airspace Docket No. 15–ANM–30, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

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

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

FOR FURTHER INFORMATION CONTACT: Tom Clark, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4511.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code.

Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class E airspace at Perry Stokes Airport, Trinidad, CO.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Persons wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2015–7115/Airspace Docket No. 15–ANM–30.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the ''**ADDRESSES**'' section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Availability and Summary of Documents Proposed for Incorporation by Reference

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

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E surface area airspace at Perry Stokes Airport, Trinidad, CO, to within a 4.6-mile radius of the airport (from a 4.2-mile radius), with a segment extending from the airport 4.6-mile radius to 7.2 miles southwest of the airport. Class E airspace extending upward from 700 feet above the surface would be modified to within a 7.2-mile radius of the airport (from an 8-mile radius) from the airport 232° bearing clockwise to the 056° bearing, and within a 4.6-mile radius from the airport 056° bearing clockwise to the 232° bearing, and with a segment extending from the 4.6-mile radius of the airport to 9.3 miles southwest of the airport. The Class E 1,200 feet airspace would be removed as this airspace is controlled by the Blue Mesa en route airspace area. Also, the airport's geographic coordinates would be updated to coincide with the FAA's aeronautical database. New RNAV standard instrument approach procedures, due to decommissioning of the Trinidad NDB, has made this action necessary for the safety, efficiency, and management of IFR operations at the airport.

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

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E Airspace Designated as Surface Areas.

ANM CO E2 Trinidad, CO [Modified]

Perry Stokes Airport, CO
(Lat. 37°15′33″ N., long. 104°20′27″ W.)

That airspace extending upward from the surface within a 4.6-mile radius of Perry Stokes Airport, and within 0.7 miles each side of the 224° bearing from the airport 4.6-mile radius to 7.2 miles southwest of the airport.

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

* * * * *

ANM CO E5 Trinidad, CO [Modified]

Trinidad, Perry Stokes Airport, CO
(Lat. 37°15′33″ N., long. 104°20′27″ W.)

That airspace extending upward from 700 feet above the surface within a 7.2-mile radius of Perry Stokes Airport from the 231° bearing clockwise to the 056° bearing, and within a 4.6-mile radius from the airport 056° bearing clockwise to the 231° bearing, and within 1-mile each side of the airport 224° bearing extending from the 4.6-mile radius to 9.3 miles southwest of the airport.

Dated: October 27, 2016.

Richard Roberts,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2016–26759 Filed 11–4–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Institutes of Standards and Technology

37 CFR Parts 401 and 404

[Docket No.: 160311229–6229–01]

RIN 0693–AB63

Rights to Federally Funded Inventions and Licensing of Government Owned Inventions

AGENCY: National Institute of Standards and Technology (NIST), United States Department of Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Institute of Standards and Technology (NIST) requests comments on proposed revisions to regulations. The proposed revisions make technical corrections, update certain sections to conform with changes in the patent laws, clarify the role of provisional patent application filing, create a new Determination of Exceptional Circumstances, increase the role of Funding Agencies in the Bayh-Dole process, address subject inventions as to which a Federal laboratory employee is a co-inventor, and streamline the licensing application process for some Federal laboratory collaborators. NIST will hold a public meeting and simultaneous webinar regarding the proposed changes on November 21, 2016.

DATES:

For Comments: Comments must be received no later than December 9, 2016.

For Public Meeting/Webinar: A meeting and simultaneous webinar will be held on November 21, 2016, from 1 p.m. until 3 p.m. Eastern Time. Requests to participate in-person must be received via the meeting Web site no later than November 14, 2016.

ADDRESSES: Submit your comments, identified by docket identification (ID) number: 160311229–6229–01, through the *Federal e-Rulemaking Portal: http://www.regulations.gov* (search using the docket number). Follow the online instructions for submitting comments. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

For Public Meeting/Webinar: A November 21, 2016 public meeting will be held in Lecture Room A on the NIST Campus in Gaithersburg, MD. Details about attending the meeting in-person or for accessing the webinar are available via the Technology Partnerships Office Web site at *http://www.nist.gov/tpo/bayh-dole.*

FOR FURTHER INFORMATION CONTACT: Courtney Silverthorn, via email: *courtney.silverthorn@nist.gov* or by telephone at 301–975–4189.

SUPPLEMENTARY INFORMATION:

A meeting and simultaneous webinar will be held on November 21, 2016, from 1 p.m. until 3 p.m. Eastern Time in Building 101, Lecture Room A on the NIST Campus in Gaithersburg, MD. Details about attending the meeting in-person or for accessing the webinar are available via the Technology Partnerships Office Web site at *http://www.nist.gov/tpo/bayh-dole.* Requests to participate in-person must be received via the meeting Web site no later than November 14, 2016; forty seats are available on a first-come, first-served basis. For participants attending in person, please note that Federal agencies, including NIST, can only accept a state-issued driver's license or identification card for access to Federal facilities if such license or identification card is issued by a state that is compliant with the REAL ID Act of 2005 (Pub. L. 109–13), or by a state that has an extension for REAL ID compliance. NIST currently accepts other forms of Federal-issued identification in lieu of a state-issued driver's license. To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON CONTACT**, no later than November 10, 2016, to give NIST as much time as possible to process your request.

I. General Information

Does this action apply to me?

This action may be of interest to you if you are an educational institution, company, or nonprofit organization, especially one that has or would like to receive Federal funding for scientific research and development.

II. Background

These proposed rule revisions are promulgated under the University and Small Business Patent Procedures Act of 1980, Public Law 96–517 (as amended), codified at title 35 of the United States Code (U.S.C.) 200 *et seq.,* commonly known as the ''Bayh-Dole Act,'' which governs rights in inventions made with Federal assistance. The Bayh-Dole Act obligates nonprofit organizations and small business firms (''contractors''), and large businesses, as directed by Executive Order 12591, to disclose each ''subject invention'' (that is, each invention conceived or first actually reduced to practice in the performance of work under a funding agreement, 35 U.S.C. 201(e)) within a reasonable time after the invention becomes known to the contractor, 35 U.S.C. 202(c)(1), and permits contractors to elect, within a reasonable time after disclosure, to retain title to a subject invention 35 U.S.C. 202(a). Under certain defined ''exceptional'' circumstances, Bayh-Dole permits the Government to restrict or eliminate the contractor's right to elect to retain title, 35 U.S.C. 202(a), 202(b), and under such circumstances, rights vest in the Government.

The Secretary of Commerce has delegated to the Director of NIST the authority to promulgate implementing regulations. Regulations implementing 35 U.S.C. 202 through 204 are codified at 37 CFR part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts, and Co-operative Agreements,'' and apply to all Federal agencies, 37 CFR 401.1(b). These regulations govern all subject inventions, 37 CFR 401.2(d), even if the Federal government is not the sole source of funding for either the conception or the reduction to practice, 37 CFR 401.1(a). Regulations implementing 35 U.S.C. 208, specifying the terms and conditions upon which federally owned inventions, other than inventions owned by the Tennessee Valley Authority, may be licensed on a nonexclusive, partially exclusive, or exclusive basis, are codified at 37 CFR

part 404, ''Licensing of Government Owned Inventions.''

Bayh-Dole and its implementing regulations require Federal funding agencies to employ certain ''standard clauses'' in funding agreements awarded to contractors, except under certain specified conditions; 37 CFR 401.3. Through these standard clauses, set forth at 37 CFR 401.14(a), contractors are obligated to take certain actions to properly manage subject inventions. These actions include disclosing each subject invention to the Federal agency within two months after the contractor's inventor discloses it in writing to contractor personnel responsible for patent matters, 37 CFR 401.14(a)(c)(1); electing in writing whether or not to retain title to any subject invention by notifying the Federal agency within two years of disclosure, 37 CFR 401.14(a)(c)(2); filing an initial patent application on a subject invention as to which the contractor elects to retain title within one year after election, 37 CFR 401.14(a)(c)(3); executing and promptly delivering to the Federal agency all instruments necessary to establish or confirm the rights the Government has throughout the world in those subject inventions to which the contractor elects to retain title, 37 CFR 401.14(a)(f)(1); requiring, by written agreement, the contractor's employees to disclose promptly in writing each subject invention made under contract, 37 CFR 401.14(a)(f)(2); notifying the Federal agency of any decision not to continue the prosecution of a patent application, 37 CFR 401.14(a)(f)(3); and including in the specification of any U.S. patent applications and any patent issuing thereon covering a subject invention, a statement that the invention was made with Government support under the grant or contract awarded by the Federal agency, and that the Government has certain rights in the invention, 37 CFR 401.14(a)(f)(4).

In addition, a contractor is obligated to include the requirements of the standard clauses in any subcontracts under the contractor's award, 37 CFR 401.14(a)(g); to submit periodic reports as requested on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the contractor or its licensees or assignees, 37 CFR 401.14(a)(h); and to agree that neither the contractor nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States, 37 CFR 401.14(a)(i), subject to waiver.

Bayh-Dole and its implementing regulations also specify certain conditions applicable to licenses granted by Federal agencies in any federally owned invention. The implementing regulations include 37 CFR 404.5, which sets forth restrictions and conditions applicable to all Federal agency licenses, 37 CFR 404.6, which addresses requirements pertaining to nonexclusive licenses, and 37 CFR 404.7, which addresses requirements pertaining to exclusive and partially exclusive licenses.

Pursuant to authority delegated to it by the Secretary of Commerce, NIST is providing notice to the public of proposed rulemaking to revise parts 401 and 404 of title 37 of the Code of Federal Regulations (CFR) which address rights to inventions made under Government grants, contracts, and co-operative agreements, and licensing of government owned inventions. NIST is seeking public comments on the proposed amendments. Brief explanations of the proposed changes are included below; the full text of 37 CFR part 401 is available at *https://www.gpo.gov/fdsys/pkg/CFR-2010-title37-vol1/pdf/CFR-2010-title37-vol1-part401.pdf* and the full text of 37 CFR part 404 is available at *https://www.gpo.gov/fdsys/granule/CFR-2004-title37-vol1/CFR-2004-title37-vol1-part404.* This section is followed by a request for comments (Section III).

The proposed revisions to 37 CFR part 401 will:

1. Clarify in § 401.1(b) that Federal agencies, under section 1., subparagraph (b)(4) of Executive Order 12591, as amended, may apply the presumption of the right to retain title to contractors which are large business firms as well as to those which are small business firms and nonprofit organizations;

2. Correct § 401.1(e) to refer to § 401.17, identifying the office to which copies of proposed and final agency regulations should be directed for approval by the Secretary of Commerce;

3. Clarify in § 401.2(b) that the term *contractor* includes any business firm regardless of size, under section 1., subparagraph (b)(4) of Executive Order 12591, as amended, which is a party to a funding agreement;

4. Clarify that the term *initial patent application* means the first provisional or nonprovisional U.S. national application for a patent as defined in 37 CFR 1.9(a)(2) and (3), respectively, or the first international application as defined in 37 CFR 1.9(b) which designates the United States, in accordance with accepted practice;

5. Clarify that the term *statutory period* refers to the one-year period in 35 U.S.C. 102(b).

6. Clarify that the use of the standard clause at § 401.14 is applicable to nonprofits and to all businesses regardless of size, consistent with section 1., subparagraph (b)(4) of Executive Order 12591, as amended.

7. Create additional conditions under § 401.3(a) for the use of alternate provisions other than § 401.14(a) through a formatting revision;

8. Create additional conditions under § 401.3(a) for the use of alternate provisions other than § 401.14(a) when work is completed under a Cooperative Research and Development Agreement (CRADA) and removes outdated language related to Department of Energy naval nuclear propulsion and weapons related programs;

9. Create additional conditions under § 401.3(a) for the use of alternate provisions other than § 401.14(a) when the contractor is not a non-profit organization and is not in the business of commercializing subject inventions that would arise under a funding agreement, consistent with the commercialization intent of 35 U.S.C. 200;

10. Remove language from § 401.3(h) related to size protests that, per subparagraph (b)(4) of Executive Order 12591, as amended, no longer applies to a distinction between large and small businesses, and clarify language related to furnishing evidence of non-profit status;

11. Update the provision for distribution of royalty payments in § 401.5(g)(3) to be consistent with 35 U.S.C. 202(c)(7)(E)(i) as amended by the America Invents Act, Public Law 112–29;

12. Revise § 401.7(b) to include participation of the funding Agency in the review of an organization's nonprofit status;

13. Revise § 401.10 to clarify the management of subject inventions when there is a Federal employee who is a co-inventor of the subject invention, including clarifying that an agency may file an initial patent application provided that it does not negate a contractor's ability to elect rights, that a funding agency will provide administrative assistance to an agency who employs a Federal co-inventor in the management of co-invented subject inventions when a contractor has waived rights, that funding agencies and Federal agencies employing co-inventors shall consult on the management of co-invented subject inventions that Federal agencies may enter into agreements with contractors

for the management of co-invented subject inventions, and that Federal agencies employing co-inventors retain their ownership rights when a contractor elects title to a co-invented subject invention;

14. Redesignate § 401.14(a)(c)(4) as 401.14(a)(c)(5);

15. Revise § 401.14(a)(c)(2) to clarify that a Federal agency may shorten the two year period of election of title by a contractor if necessary to protect the Government's interests;

16. Clarify in § 401.14(c) that a Federal agency may file an initial patent application at its own expense on a jointly-owned subject invention, if necessary to protect the Government's interest in the subject invention;

17. Remove the 60-day agency time limitation after learning that a contractor has failed to disclose an invention or elect rights, in § 401.14(a)(d)(1), in order to improve due diligence and enhance the ability of agencies to work with contractors;

18. Clarify the requirement in § 401.14(a)(f)(2) for a contractor to require its employees to assign rights in subject inventions to the contractor and in order for the contractor to file patent applications on subject inventions developed under the contract;

19. Revise § 401.14(a)(f)(3) to extend the required notification period for decisions not to continue patent prosecution from 30 days before the expiration of the response period to 120 days, in order to allow the Federal agency adequate time to determine whether to assume responsibility for patent prosecution of the subject invention;

20. Revise § 401.14(a)(k)(4) to provide for the funding agency's participation in the small business preference review process for the licensing of subject inventions by nonprofit contractors, and providing that the funding agency or the contractor may request review by the Secretary of Commerce as well;

21. Revise § 401.16 to make electronic filing the default format for reporting and elections unless otherwise directed by an agency; and

22. Add contact information for Interagency Edison, which is used by many Federal agencies, to § 401.17.

The proposed revisions to 37 CFR part 404 will:

23. Redesignate the existing text in § 404.8 as paragraph (a) and create a new paragraph (b) to provide that a CRADA partner is not required to submit a separate license application to an agency in order to access, under the CRADA, background technology owned by the Government.

This proposed rulemaking does not address contractor appeals of exceptions (§ 401.4), exercise of march-in rights (§ 401.6), small business preference (§ 401.7), subject invention utilization reporting (§ 401.8), contractor employee inventor rights retention (§ 401.9), appeals (§ 401.11), background patent rights licensing (§ 401.12), patent rights clauses administration (§ 401.13), or deferred determinations (§ 401.15) of part 401, and addresses only the license application provision (§ 404.8) of part 404.

III. Request for Comments

NIST is requesting comments about parts 401 and 404 of the Bayh-Dole regulations. We have included some questions that you might consider as you develop your comments:

1. Are there any changes to these regulations, consistent with current law, that you or your organization think would accelerate the transfer of federally funded research and technology to entrepreneurs, or otherwise strengthen the Nation's innovation system?

2. Are there provisions within 37 CFR part 401 or 404 that are inconsistent with, or otherwise affected by, changes in the patent laws under the Leahy-Smith America Invents Act, Public Law 112–29, or that Act's implementing regulations?

3. Are there ways that the Federal Government can better share information on federally funded inventions in order to increase technology transfer and licensing opportunities?

4. Are there ways to incentivize reporting compliance and compliance with the requirement to include a government support clause in patents?

5. Do recipients of Federal funding, and their licensees, encounter issues in the reporting process? Are there changes that could streamline the requirements and reduce barriers to reporting?

When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Please organize your comments by referencing the specific question you are responding to or the relevant section number in the proposed regulatory text.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. Provide specific examples to illustrate your concerns and suggest alternatives.

vi. Explain your views as clearly as possible.

vii. Comments that contain profanity, vulgarity, threats, or other inappropriate language will not be considered.

viii. Make sure to submit your comments by the comment period deadline identified.

IV. References

1. Federal Laboratory Consortium for Technology Transfer. (n.d.) *Technology Transfer Mechanisms.* Retrieved from *http://www.federallabs.org/education/t2-mechanisms/.*

2. National Institute of Standards and Technology, *Federal Laboratory Technology Transfer, Fiscal Year 2010 Summary Report to the President and the Congress,* August 2012, *http://www.nist.gov/tpo/publications/index.cfm.* See *appendix table 4–40.*

3. Federal Laboratory Consortium for Technology Transfer. (2011). *Technology Transfer Desk Reference.* Retrieved from: *http://globals.federallabs.org/pdf/T2_Desk_Reference.pdf.*

4. Kalil, T. and Wong, J. (2015). *Lab to Market: Cross Agency Priority Goal Quarterly Progress Update, Fiscal Year 2015 Quarter 4.* Retrieved from: *https://www.performance.gov/node/3395/view?view=public#progress-update.*

V. Statutory and Executive Order Reviews

Executive Order 12866

This rulemaking is a significant regulatory action under sections 3(f)(3) and 3(f)(4) of Executive Order 12866, as it raises novel policy issues. This rulemaking, however, is not an ''economically significant'' regulatory action under section 3(f)(1) of the Executive order, as it does not have an effect on the economy of $100 million or more in any one year, and it does not have a material adverse effect on the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

Executive Order 13132

This proposed rule does not contain policies with Federalism implications as defined in Executive Order 13132.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires the preparation and availability for public comment of ''an initial regulatory flexibility analysis'' which will ''describe the impact of the

proposed rule on small entities.'' (5 U.S.C. 603(a)). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this rulemaking, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows:

A description of this proposed rule, why it is being considered, and the objectives of this proposed rule are contained in the preamble and in the **SUMMARY** section of the preamble. The statutory basis for this proposed rule is provided by 35 U.S.C. 200–212. The Bayh-Dole Act and its implementing regulations apply to all small business firms and nonprofit organizations that have entered into a Federal funding agreement, as defined in 35 U.S.C. 201, and express a policy to ''encourage maximum participation of small business firms in federally supported research and development efforts; to promote collaboration between commercial concerns and nonprofit organizations, including universities; [and] to ensure that inventions made by nonprofit organizations and small business firms are used in a manner to promote free competition and enterprise without unduly encumbering future research and discovery.'' 35 U.S.C. 200. For small business firms and nonprofit organizations that deal with the Government in areas of technology development, the Bayh-Dole implementing regulations make it easier to participate in federally-supported programs by guaranteeing the protection of the intellectual property they create. This proposed rule, if implemented, would predominantly make technical changes and clarifications and is not anticipated to have any quantifiable economic impact with respect to small entities. Several proposed changes would bring the regulations into conformity with the America Invents Act, Public Law 112–29, and Executive Order 12591, which gave Federal agencies discretion to expand applicability of certain provisions to firms regardless of their size. Proposed changes to the definition of ''initial patent application'' clarify that it would include a provisional application, making it less costly and burdensome for small entities to comply with the regulations' requirements. Proposed changes to 37 CFR 401.3 provide Federal agencies with some additional flexibility in choosing when to include the ''standard clauses'' described earlier in funding agreements awarded to contractors, which could benefit small businesses and nonprofits. The additional flexibility provided by these changes could provide some benefit to small entities. While proposed changes to 37 CFR 401.14 would allow Federal agencies to shorten certain time limitations applicable to election of title by a contractor (including small entities), these proposed changes are only intended to provide more efficient resolution of issues and not anticipated to have any negative substantive result.

The information provided above supports a determination that this proposed rule would not have a significant economic impact on a substantial number of small entities. Because this rulemaking, if implemented, is not expected to have a significant economic impact on any small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

Paperwork Reduction Act

This proposed rule contains no new collection of information subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

This proposed rule will not significantly affect the quality of the human environment. Therefore, an environmental assessment or Environmental Impact Statement is not required to be prepared under the National Environmental Policy Act of 1969.

List of Subjects in 37 CFR Parts 401 and 404

Inventions and patents, Laboratories, Research and development, Science and technology, Technology transfer.

For the reasons stated in the preamble, the National Institute of Standards and Technology proposes to amend 37 CFR parts 401 and 404 as follows:

PART 401—RIGHTS TO INVENTIONS MADE BY NONPROFIT ORGANIZATIONS AND SMALL BUSINESS FIRMS UNDER GOVERNMENT GRANTS, CONTRACTS, AND COOPERATIVE AGREEMENTS

■ 1. The authority citation for 37 CFR part 401 continues to read as follows:

Authority: 35 U.S.C. 206; DOO 30–2A.

■ 2. Section 401.1 is amended as follows:

■ a. Revise the second sentence of paragraph (b); and

■ b. In paragraph (e), remove ''401.16'' and add in its place ''401.17''.

The revision reads as follows:

§ 401.1 Scope.

* * * * *

(b) * * * It applies to all funding agreements with business firms regardless of size (consistent with section 1., subparagraph (b)(4) of Executive Order 12591, as amended by Executive Order 12618) and to nonprofit organizations, except for a funding agreement made primarily for educational purposes. * * *

* * * * *

■ 3. Section 401.2 is amended as follows:

■ a. Revise paragraphs (b) and (n); and

■ b. Add paragraph (o).

The revisions and additions read as follows:

§ 401.2 Definitions.

* * * * *

(b) The term *contractor* means any person, small business firm or nonprofit organization, or, as set forth in Section 1., subparagraph (b)(4) of Executive Order 12591, as amended, any business firm regardless of size, which is a party to a funding agreement.

* * * * *

(n) The term *initial patent application* means the first provisional or non-provisional U.S. national application for patent as defined in 37 CFR 1.9(a)(2) and (3), respectively, or the first international application as defined in 37 CFR 1.9(b) which designates the United States.

(o) The term *statutory period* means the one-year period before the effective filing date of a claimed invention during which exceptions to prior art exist per 35 U.S.C. 102(b).

■ 4. Section 401.3 is amended as follows:

■ a. Revise the first sentence of paragraph (a);

■ b. In paragraph (a)(4), remove the period at the end of the paragraph and add in its place ''; or'';

■ c. Revise paragraph (a)(5);

■ d. Add paragraph (a)(6);

■ e. In paragraph (b), revise the first sentence, remove ''§ 401.14(b)'' and add in its place ''paragraph (c) of this section'' and remove ''§ 401.14(a)'' and add in its place ''§ 401.14''

■ f. Revise the paragraph (c);

■ g. Revise paragraph (h); and

■ h. Add paragraph (i).

The revisions and additions read as follows:

§ 401.3 Use of the standard clauses at § 401.14.

(a) Each funding agreement awarded to a contractor (except those subject to 35 U.S.C. 212) shall contain the clause found in § 401.14(a) with such modifications and tailoring as authorized or required elsewhere in this part. * * *

* * * * *

(5) If any part of the contract may require the contractor to perform work on behalf of the Government at a Government laboratory under a Cooperative Research and Development Agreement (CRADA) pursuant to the statutory authority of 15 U.S.C. 3710a; or

(6) If the contract provides for services and the contractor is not a nonprofit organization and does not promote the commercialization and public availability of subject inventions pursuant to 35 U.S.C. 200.

(b) When an agency excercises the exceptions at § 401.3(a)(2), (3), or (6), it shall use the standard clause at § 401.14 with only such modifications as are necessary to address the exceptional circumstances or concerns which led to the use of the exception. * * *

(c) When the Department of Energy (DOE) determines to use alternative provisions under § 401.3(a)(4), the standard clause at § 401.14 shall be used with the following modifications, or substitute thereto with such modification and tailoring as authorized or required elsewhere in this part:

(1) The title of the clause shall be changed to read as follows: Patent Rights to Nonprofit DOE Facility Operators

(2) Add an ''(A)'' after ''(1)'' in paragraph (c)(1) of the clause in § 401.14 and add subparagraphs (B) and (C) to paragraph (c)(1) of the clause in § 401.14 as follows:

(B) If the subject invention occurred under activities funded by the naval nuclear propulsion or weapons related programs of DOE, then the provisions of this paragraph (c)(1)(B) will apply in lieu of paragraphs (c)(2) and (3) of this clause. In such cases the contractor agrees to assign the government the entire right, title, and interest thereto throughout the world in and to the subject invention except to the extent that rights are retained by the contractor through a greater rights determination or under paragraph (e) of this clause. The contractor, or an employee-inventor, with authorization of the contractor, may submit a request for greater rights at the time the invention is disclosed or within a reasonable time thereafter. DOE will process such a request in accordance with procedures at 37 CFR 401.15. Each determination of greater rights will be subject to paragraphs (h) through (k) of this clause and such additional conditions, if any, deemed to be appropriate by the Department of Energy.

(C) At the time an invention is disclosed in accordance with (c)(1)(A) of this clause, or within 90 days thereafter, the contractor will submit a written statement as to whether or not the invention occurred under a naval nuclear propulsion or weapons-related program of the Department of Energy. If this statement is not filed within this time, paragraph (c)(1)(B) of this clause will apply in lieu of paragraphs (c)(2) and (3). The contractor statement will be deemed conclusive unless, within 60 days thereafter, the Contracting Officer disagrees in writing, in which case the determination of the Contracting Officer will be deemed conclusive unless the contractor files a claim under the Contract Disputes Act within 60 days after the Contracting Officer's determination. Pending resolution of the matter, the invention will be subject to paragraph (c)(1)(B) of this clause.

(3) Paragraph (k)(3) of the clause in § 401.14 will be modified as prescribed at § 401.5(g).

* * * * *

(h) A prospective contractor may be required by an agency to certify that it is a nonprofit organization. If the agency has reason to question the nonprofit status of the prospective contractor, it may require the prospective contractor to furnish evidence to establish its status as a nonprofit organization.

(i) When an agency excercises the exception at § 401.3(a)(5), replace (b) of the basic clause in § 401.14 with the following paragraphs (b)(1) and (2):

(b) *Allocation of principal rights.* (1) The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause, including paragraph (b)(2) of this clause, and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(2) If the Contractor performs services at a Government owned and operated laboratory or at a Government owned and contractor operated laboratory directed by the Government to fulfill the Government's obligations under a Cooperative Research and Development Agreement (CRADA) authorized by 15 U.S.C. 3710a, the Government may require the Contractor to negotiate an agreement with the CRADA collaborating party or parties regarding the allocation of rights to any subject invention the Contractor makes, solely or jointly, under the CRADA. The agreement shall be negotiated prior to the Contractor undertaking the CRADA work or, with the permission of the Government, upon the identification of a subject invention. In the absence of such an agreement, the Contractor agrees to grant the collaborating party or parties an option for a license in its inventions of the same scope and terms set forth in the CRADA for inventions made by the Government.

■ 5. Revise § 401.5 to read as follows:

§ 401.5 Modification and tailoring of clauses.

(a) Agencies should complete the blank in paragraph (g)(2) of the clauses at § 401.14 in accordance with their own or applicable government-wide regulations such as the Federal Acquisition Regulation. In grants and cooperative agreements (and in contracts, if not inconsistent with the Federal Acquisition Regulation) agencies wishing to apply the same clause to all subcontractors as is applied to the contractor may delete paragraph (g)(2) of the clause in § 401.14 and delete the words ''to be performed by a small business firm or domestic nonprofit organization'' from paragraph (g)(1). Also, if the funding agreement is a grant or cooperative agreement, paragraph (g)(3) may be deleted. When either paragraph (g)(2) of the clause in § 401.14 or paragraphs (g)(2) and (3) of the clause in § 401.14 are deleted, the remaining paragraph or paragraphs should be renumbered appropriately.

(b) Agencies should complete paragraph (l), ''Communications'', at the end of the clauses at § 401.14 by designating a central point of contact for communications on matters relating to the clause. Additional instructions on communications may also be included in paragraph (l) of the clause in § 401.14.

(c) Agencies may replace the italicized words and phrases in the clauses at § 401.14 with those appropriate to the particular funding agreement. For example, ''contracts'' could be replaced by ''grant,'' ''contractor'' by ''grantee,'' and ''contracting officer'' by ''grants officer.'' Depending on its use, ''Federal agency'' can be replaced either by the identification of the agency or by the specification of the particular office or official within the agency.

(d)(1) When the agency head or duly authorized designee determines at the time of contracting with a small business firm or nonprofit organization that it would be in the national interest to acquire the right to sublicense foreign governments or international organizations pursuant to any existing treaty or international agreement, a sentence may be added at the end of paragraph (b) of the clause at § 401.14 as follows:

This license will include the right of the government to sublicense foreign governments, their nationals, and international organizations, pursuant to the

following treaties or international agreements: _____.

(2) The blank in the added text in paragraph (d)(1) of this section should be completed with the names of applicable existing treaties or international agreements, agreements of cooperation, memoranda of understanding, or similar arrangements, including military agreements relating to weapons development and production. The added language is not intended to apply to treaties or other agreements that are in effect on the date of the award but which are not listed. Alternatively, agencies may use substantially similar language relating the government's rights to specific treaties or other agreements identified elsewhere in the funding agreement. The language may also be modified to make clear that the rights granted to the foreign government, and its nationals or an international organization may be for additional rights beyond a license or sublicense if so required by the applicable treaty or international agreement. For example, in some exclusive licenses or even the assignment of title in the foreign country involved might be required. Agencies may also modify the added language to provide for the direct licensing by the contractor of the foreign government or international organization.

(e) If the funding agreement involves performance over an extended period of time, such as the typical funding agreement for the operation of a government-owned facility, the following language may also be added:

The agency reserves the right to unilaterally amend this funding agreement to identify specific treaties or international agreements entered into or to be entered into by the government after the effective date of this funding agreement and effectuate those license or other rights which are necessary for the government to meet its obligations to foreign governments, their nationals and international organizations under such treaties or international agreements with respect to subject inventions made after the date of the amendment.

(f) Agencies may add additional subparagraphs to paragraph (f) of the clauses at § 401.14 to require the contractor to do one or more of the following:

(1) Provide a report prior to the close-out of a funding agreement listing all subject inventions or stating that there were none.

(2) Provide, upon request, the filing date, patent application number and title; a copy of the patent application; and patent number and issue date for any subject invention in any country in which the contractor has applied for a patent.

(3) Provide periodic (but no more frequently than annual) listings of all subject inventions which were disclosed to the agency during the period covered by the report.

(g) If the contract is with a nonprofit organization and is for the operation of a government-owned, contractor-operated facility, the following will be substituted for the text of paragraph (k)(3) of the clause at § 401.14:

After payment of patenting costs, licensing costs, payments to inventors, and other expenses incidental to the administration of subject inventions, the balance of any royalties or income earned and retained by the contractor during any fiscal year on subject inventions under this or any successor contract containing the same requirement, up to any amount equal to five percent of the budget of the facility for that fiscal year, shall be used by the contractor for scientific research, development, and education consistent with the research and development mission and objectives of the facility, including activities that increase the licensing potential of other inventions of the facility. If the balance exceeds five percent, 15 percent of the excess above five percent shall be paid by the contractor to the Treasury of the United States and the remaining 85 percent shall be used by the contractor only for the same purposes as described in the preceding sentence. To the extent it provides the most effective technology transfer, the licensing of subject inventions shall be administered by contractor employees on location at the facility.

(h) If the contract is for the operation of a government-owned facility, agencies may add paragraph (f)(5) to the clause at § 401.14 with the following text;

The contractor shall establish and maintain active and effective procedures to ensure that subject inventions are promptly identified and timely disclosed and shall submit a description of the procedures to the contracting officer so that the contracting officer may evaluate and determine their effectiveness.

■ 6. In § 401.7, revise paragraph (b) to read as follows:

§ 401.7 Small business preference.

* * * * *

(b) Small business firms that believe a nonprofit organization is not meeting its obligations under the clause may report their concerns to the funding Agency identified at § 401.14(l), and following receipt of the funding Agency's initial response to their concerns or, if no initial funding Agency response is received within 90 days from the date their concerns were reported to the funding Agency, may thereafter report their concerns, together with any response from the funding Agency, to the Secretary. To the extent deemed appropriate, the Secretary, in consultation with the funding Agency, will undertake informal investigation of the concern, and, if appropriate, enter into discussions or negotiations with the nonprofit organization to the end of improving its efforts in meeting its obligations under the clause. However, in no event will the Secretary intervene in ongoing negotiations or contractor decisions concerning the licensing of a specific subject invention. All investigations, discussions, and negotiations of the Secretary described in this paragraph will be in coordination with other interested agencies, including the funding Agency and the Small Business Administration. In the case of a contract for the operation of a government-owned, contractor operated research or production facility, the Secretary will coordinate with the agency responsible for the facility prior to any discussions or negotiations with the contractor.

■ 7. Revise § 401.10 to read as follows:

§ 401.10 Government assignment to contractor of rights in invention of government employee.

(a) In any case when a Federal employee is a co-inventor of any invention made under a funding agreement with a contractor:

(1) If the Federal agency employing such co-inventor transfers or reassigns the right it has acquired in the subject invention from its employee to the contractor as authorized by 35 U.S.C. 202(e), the assignment will be made subject to the patent rights clause of the contractor's funding agreement.

(2) The Federal agency employing such co-inventor may submit an initial patent application, provided that the contractor retains the ability to elect rights pursuant to 35 U.S.C. 202(a).

(3) When a Federal employee is a co-inventor of a subject invention developed with contractor-employed co-inventors under a funding agreement from another agency:

(i) The funding agency will notify the agency employing a Federal co-inventor of any report of invention and whether the contractor elects or waives rights.

(ii) If the contractor waives rights to the subject invention, the funding agency must promptly provide notice to the agency employing a Federal co-inventor, and to the extent practicable, at least 60 days before any statutory bar date.

(iii) Upon notification by the funding agency of a subject invention in which the contractor has waived rights, the agency employing a Federal co-inventor

must determine if there is a government interest in patenting the invention and will notify the funding agency of its determination.

(iv) If the agency employing a Federal co-inventor determines there is a government interest in patenting the subject invention, the funding agency must provide administrative assistance (but is not required to provide financial assistance) to the agency employing a Federal co-inventor in acquiring rights from the contractor in order to file an initial patent invention.

(v) The agency employing a Federal co-inventor has priority for patenting over funding agencies that do not have a Federal co-inventor when a contractor has waived rights.

(vi) The funding agency and the agency employing a Federal co-inventor shall consult in order to ensure that the intent of the programmatic objectives conducted under the funding agreement is represented in any patenting decisions. The agency employing a Federal co-inventor may transfer patent management responsibilities to the funding agency.

(4) Federal agencies employing such co-inventors may enter into an agreement with a contractor when an agency determines it is a suitable and necessary step to protect and administer rights on behalf of the Federal Government, pursuant to 35 U.S.C. 202(e).

(5) Federal agencies employing such co-inventors will retain all ownership rights to which they are otherwise entitled if the contractor elects title to the subject invention.

(b) Agencies may add additional conditions as long as they are consistent with 35 U.S.C. 201–206.

■ 8. Amend § 401.14 as follows:

■ a. Remove the paragraph (a) designation from the first sentence of the section and republish the sentence;

■ b. Add paragraph (a)(7);

■ c. Revise paragraph (c)(2);

■ d. Redesignate the existing paragraph (c)(4) as paragraph (c)(5);

■ e. Add a new paragraph (c)(4); and

■ f. Revise paragraphs (d)(1), (f)(2) and (3), (g)(1), and (k)(4);

■ g. Revise the text after the paragraph heading of paragraph (l);

■ h. Remove the second paragraphs (b) and (c) from the end of the section which appear after paragraph (l).

The additions and revisions read as follows:

§ 401.14 Standard patent rights clauses.

The following is the standard patent rights clause to be used as specified in § 401.3(a):

Standard Patent Rights

(a) * * *

(7) The term *statutory period* means the one-year period before the effective filing date of a claimed invention during which exceptions to prior art exist per 35 U.S.C. 102(b).

* * * * *

(c) * * *

(2) The contractor will elect in writing whether or not to retain title to any such invention by notifying the Federal agency within two years of disclosure to the Federal agency. However, the period for election of title may be shortened by the Federal agency where the agency determines that a shorter period is necessary in order to protect the government's interest, and in any case where a patent, a printed publication, public use, sale, or other availability to the public has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

* * * * *

(4) Where the Federal agency determines that it would be in the interest of the government, pursuant to 35 U.S.C. 207(a)(3), for the Federal agency to file an initial patent application on any subject invention with Federal agency and contractor inventors, the Federal agency, at its discretion and in consultation with the contractor, may file such application at its own expense.''

* * * * *

(d) * * *

(1) If the contractor fails to disclose or elect title to the subject invention within the times specified in (c), above, or elects not to retain title.

* * * * *

(f) * * *

(2) The contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the contractor each subject invention made under contract in order that the contractor can comply with the disclosure provisions of paragraph (c) of this clause, to assign to the contractor the entire right, title and interest in and to each subject invention made under contract, and to execute all papers necessary to file patent applications on subject inventions and to establish the government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by paragraph (c)(1) of this clause. The contractor shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The contractor will, no less than 120 days prior to the expiration of any applicable response period or other filing deadline required by the relevant patent office, notify the Federal agency of any decision: Not to continue the prosecution of a patent application; not to pay a maintenance, annuity or renewal fee; not to defend in a reexamination or opposition proceeding on a patent, in any country; to request, be a party to, or take action in a trial proceeding before the Patent Trial and Appeals Board of the U.S. Patent and Trademark Office, including but not limited to post-grant review, review of a business method patent, *inter partes* review, and derivation proceeding; or to request, be a party to, or take action in a non-trial submission of art or information at the U.S. Patent and Trademark Office, including but not limited to a pre-issuance submission, a post-issuance submission, and supplemental examination.

(g) * * *

(1) The contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work to be performed by a subcontractor.

* * * * *

(k) * * *

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms and that it will give a preference to a small business firm when licensing a subject invention if the contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the contractor. However, the contractor agrees that the Federal agency may review the contractor's licensing program and decisions regarding small business applicants, and the contractor will negotiate changes to its licensing

policies, procedures, or practices with the Federal agency when the Federal agency's review discloses that the contractor could take reasonable steps to implement more effectively the requirements of this paragraph (k)(4). The Federal agency or the contractor may request that the Secretary review the contractor's licensing program and decisions regarding small business applicants.

(l) * * *

[Complete according to instructions at § 401.5(b)]

■ 9. In § 401.16:

■ a. Remove the word ''may'' from paragraphs (a), (b), and (c), and add in its place the word ''shall''; and

■ b. Add paragraph (d).

The addition reads as follows:

§ 401.16 Electronic filing.

* * * * *

(d) Other written notices required in this clause may be electronically delivered to the agency or the contractor through an electronic database used for reporting subject inventions, patents, and utilization reports to the funding agency.

■ 11. Revise § 401.17 to read as follows:

§ 401.17 Submissions and inquiries.

All submissions or inquiries should be directed to the Chief Counsel for NIST, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 1052, Gaithersburg, Maryland 20899–1052; telephone: (301) 975–2803; email: *nistcounsel@nist.gov.* Information about and procedures for electronic filing under this Part are available at the Interagency Edison Web site and service center, *http://www.iedison.gov,* telephone (301) 435–1986.

PART 404—LICENSING OF GOVERNMENT OWNED INVENTIONS

■ 12. The authority citation for 37 CFR part 404 continues to read as follows:

Authority: 35 U.S.C. 207–209, DOO 30–2A.

■ 13. Revise § 404.8 to read as follows:

§ 404.8 Application for a license.

(a) An application for a license should be addressed to the Federal agency having custody of the invention and shall normally include:

(1) Identification of the invention for which the license is desired including the patent application serial number or patent number, title, and date, if known;

(2) Identification of the type of license for which the application is submitted;

(3) Name and address of the person, company, or organization applying for the license and the citizenship or place of incorporation of the applicant;

(4) Name, address, and telephone number of the representative of the applicant to whom correspondence should be sent;

(5) Nature and type of applicant's business, identifying products or services which the applicant has successfully commercialized, and approximate number of applicant's employees;

(6) Source of information concerning the availability of a license on the invention;

(7) A statement indicating whether the applicant is a small business firm as defined in § 404.3(c)

(8) A detailed description of applicant's plan for development or marketing of the invention, or both, which should include:

(i) A statement of the time, nature and amount of anticipated investment of capital and other resources which applicant believes will be required to bring the invention to practical application;

(ii) A statement as to applicant's capability and intention to fulfill the plan, including information regarding manufacturing, marketing, financial, and technical resources;

(iii) A statement of the fields of use for which applicant intends to practice the invention; and

(iv) A statement of the geographic areas in which applicant intends to manufacture any products embodying the invention and geographic areas where applicant intends to use or sell the invention, or both;

(9) Identification of licenses previously granted to applicant under federally owned inventions;

(10) A statement containing applicant's best knowledge of the extent to which the invention is being practiced by private industry or Government, or both, or is otherwise available commercially; and

(11) Any other information which applicant believes will support a determination to grant the license to applicant.

(b) An executed CRADA which provides for the use for research and development purposes by the CRADA collaborator under that CRADA of a Federally-owned invention in the Federal laboratory's custody (pursuant to 35 U.S.C. 209 and 15 U.S.C. 3710a(b)(1)), and which addresses the information in paragraph (a) of this section, may be treated by the Federal laboratory as an application for a license.

Kent Rochford,

Associate Director for Laboratory Programs.

[FR Doc. 2016–25325 Filed 11–4–16; 8:45 am]

BILLING CODE 3510–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2016–0559; FRL–9954–97–Region 2]

Approval of Air Quality Implementation Plans; Puerto Rico; Attainment Demonstration for the Arecibo Lead Nonattainment Area

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency is proposing to approve a State Implementation Plan dated August 30, 2016, submitted by the Commonwealth of Puerto Rico to the EPA, for the purpose of providing for attainment of the 2008 Lead National Ambient Air Quality Standards in the Arecibo Lead nonattainment area. The Arecibo nonattainment Area is comprised of a portion of Arecibo Municipality in Puerto Rico with a 4 kilometer radius surrounding The Battery Recycling Company, Inc. Puerto Rico initially submitted a lead SIP revision for the Arecibo area on January 30, 2015. The EPA proposed to disapprove the January 30, 2015 submittal on February 29, 2016. The PREQB rescinded the January 30, 2015 submittal and replaced it with the August 30, 2016 lead SIP submittal for the Arecibo area.

DATES: Comments must be received on or before December 7, 2016.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–R02–OAR–2016–0559 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not

consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Mazeeda Khan, Air Programs Branch, Environmental Protection Agency, 290 Broadway, New York, New York 10007–1866, (212) 637–3715, or by email at *khan.mazeeda@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. What action is the EPA proposing?

The Environmental Protection Agency (EPA) is proposing to approve Puerto Rico's State Implementation Plan (SIP) dated August 30, 2016, as submitted by the Puerto Rico Environmental Quality Board (PREQB) to the EPA, for the purpose of demonstrating attainment of the 2008 Lead National Ambient Air Quality Standards (NAAQS) in the Arecibo Lead nonattainment area (Arecibo Area or Area). The Arecibo Area is comprised of a portion of Arecibo Municipality in Puerto Rico with a 4 kilometer radius surrounding The Battery Recycling Company, Inc. (TBRCI). Puerto Rico's lead attainment plan for the Arecibo Area includes a base year emissions inventory, a modeling demonstration of lead attainment, contingency measures and narrative on control measures that included reasonably available control measures (RACM)/reasonably available control technology (RACT), and reasonable further progress (RFP).

The EPA proposes to determine that Puerto Rico's attainment plan for the 2008 Lead NAAQS for the Arecibo Area meets the applicable requirements of the Clean Air Act (CAA). The EPA is proposing to approve Puerto Rico's attainment plan for the Arecibo Area. The EPA's analysis for this proposed action is discussed in Section IV of this proposed rulemaking.

II. What is the background information for this proposal?

On November 12, 2008 (73 FR 66964), the EPA revised the Lead NAAQS, lowering the level from 1.5 micrograms per cubic meter (μg/m^3) to 0.15 μg/m^3 calculated over a three-month rolling average. The EPA established the 2008 Lead NAAQS based on significant evidence and numerous health studies demonstrating that serious health effects are associated with exposures to lead emissions.

Following promulgation of a new or revised NAAQS, the EPA is required by the CAA to designate areas throughout the United States as attaining or not attaining the NAAQS; this designation process is described in section 107(d)(1) of the CAA. On November 22, 2010 (75 FR 71033), the EPA promulgated initial air quality designations for the 2008 Lead NAAQS, which became effective on December 31, 2010, based on air quality monitoring data for calendar years 2007–2009, where there was sufficient data to support a nonattainment designation. On November 22, 2011 (76 FR 72097), designations for the 2008 Lead NAAQS for all remaining areas were completed, which became effective on December 31, 2011, based on air quality monitoring data for calendar years 2008–2010. Effective December 31, 2011, the Arecibo Area was designated as nonattainment for the 2008 Lead NAAQS, based on air quality monitoring data from April 2010 to June 2010 using a three-month rolling average design value. This designation triggered a requirement for Puerto Rico to submit a SIP revision by June 30, 2013, with a plan for how the Area would attain the 2008 Lead NAAQS, as expeditiously as practicable, but no later than December 31, 2016.

The PREQB initially submitted a lead SIP revision for the Arecibo area on January 30, 2015. The EPA proposed to disapprove the January 30, 2015 submittal on February 29, 2016 (81 FR 10159). One comment was received from the Chairman of the PREQB, Weldin Ortiz Franco. The PREQB rescinded the January 30, 2015 submittal and replaced it with the August 30, 2016 lead SIP submittal for the Arecibo area. Accordingly, the EPA is proposing to act on the August 30, 2016 submittal. Today's proposal represents EPA's only action on Puerto Rico lead SIP. The revised SIP submittal included the base year emissions inventory and the attainment demonstration. The EPA's analysis of the submitted attainment plan includes a review of the pollutant addressed, emissions inventory requirements, modeling demonstration of lead attainment, contingency measures and narrative on control measures that included reasonably available control measures (RACM)/reasonably available control technology (RACT), and reasonable further progress (RFP) for the Arecibo Area.

III. What is included in Puerto Rico's proposed SIP submittal?

In accordance with CAA section 172(c) and 40 Code of Federal Regulations (CFR) 51.117, Puerto Rico's attainment plan for the Arecibo Area includes: (1) An emissions inventory for the plan's base year (2011); and (2) an attainment demonstration. The attainment demonstration includes: Technical analyses that locate, identify and quantify sources of emissions contributing to violations of the 2008 Lead NAAQS; a modeling analysis of an emissions control strategy for the TBRCI facility that attains the level of the Lead NAAQS by the attainment year (2016); and, contingency measures required under CAA section 172(c)(9).

IV. What is the EPA's analysis of Puerto Rico's Attainment Plan submittal?

CAA section 172(c)(4) and the Lead SIP regulations found at 40 CFR 51.117 require States to employ atmospheric dispersion modeling for the demonstration of attainment of the Lead NAAQS for areas in the vicinity of point sources listed in 40 CFR 51.117(a)(1), as expeditiously as practicable. Section 302(d) of the CAA includes the Commonwealth of Puerto Rico in the definition of the term ''State.'' The demonstration must also meet the requirements of 40 CFR 51.112 and 40 CFR part 51, appendix W, and include inventory data, modeling results, and emissions reduction analyses on which the State has based its projected attainment. All these requirements comprise the ''attainment plan'' that is required for lead nonattainment areas. In the case of the Arecibo Area, the EPA is proposing to approve the August 30, 2016 attainment plan submitted by Puerto Rico. The EPA's analysis is provided below.

a. Pollutants Addressed

Puerto Rico's lead attainment plan evaluates lead emissions in the Arecibo Area within the portion of Arecibo

Municipality designated nonattainment for the 2008 Lead NAAQS. There are no precursors to consider for the lead attainment plan.

b. Emissions Inventory Requirements

i. 2011 Base Year Inventory

States are required under section 172(c)(3) of the CAA to develop comprehensive, accurate and current inventories of actual emissions from all sources of the relevant pollutant or pollutants in the area. These inventories provide a detailed accounting of all emissions and emission sources by precursor or pollutant. In the November 12, 2008, Lead Standard rulemaking, the EPA finalized the emissions inventory requirements. The current regulations are located at 40 CFR 51.117(e), and include, but are not limited to, the following emissions inventory requirements:

- The SIP inventory must be approved by the EPA as a SIP element and is subject to public hearing requirements; and,
- The point source inventory upon which the summary of the baseline for lead emissions inventory is based must contain all sources that emit 0.5 or more tons of lead per year (tons/yr).

For the base year inventory of actual emissions, the EPA generally recommends using either the year 2010 or 2011 as the base year for the contingency measure calculations, but does provide flexibility for using other inventory years if states can show another year is more appropriate.[1] For Lead SIPs, CAA section 172(c)(3) requires that all sources of lead emissions in the nonattainment area be submitted with the base-year inventory.

Puerto Rico selected calendar year 2011 as the base year. This inventory included Arecibo, Barceloneta, Ciales, Florida, Hatillo and Utuado municipalities. Several facilities located in these municipalities that may be a source of lead emissions were considered in the inventory. These facilities are: TBRCI, PREPA Cambalache, Safetech Corporation, Antonio Nery Juarbe (ANJ) Airport, Eaton, Abbvie Ltd., Pfizer Pharmaceuticals LLC, and Merck Sharp & Dohme. TBRCI was a secondary lead smelter facility, dedicated to recycling lead-acid batteries and had potential lead emissions over 0.5 tons/yr. PREPA Cambalache is an electric power facility. Safetech Corporation is a nearby source dedicated to the collection, temporary storage and disposal by incineration of commercial and industrial non-hazardous solid waste. The ANJ Airport is a general aviation airport located near TBRCI. Eaton is dedicated to power and transformer manufacturing and Abbvie Ltd. (formerly Abbott Laboratories), Merck Sharp and Dohme and Pfizer are pharmaceuticals processes. Energy Answers and Sunbeam Synergy, two new facilities that are permitted but are not under construction yet, were also included in the 2016 emissions inventory. For the 2011 emissions inventory, actual emissions were used for facilities with actual reported emissions and/or activity data. For facilities with no reported 2011 emissions data, the facility maximum capacity or permit limits were used to calculate 2011 emissions in order to include all possible emissions as part of the attainment demonstration analysis. The ANJ Airport lead emissions are from the EPA Emissions Inventory System/National Emissions Inventory (EIS/NEI) System.

According to this inventory, the only source of lead emissions of 0.5 of tons/yr, or more, in 2011 is TBRCI which emitted 1.21 tons of lead per year. All other facilities were well below the 0.5 tons/yr limit as identified in Table 1. TBRCI was dedicated to the recycling of lead batteries for the production of lead of different specifications. It produced point source emissions from one furnace and five kettle burners and fugitive emissions from material transport and handling.

The 2011 preliminary air quality modeling studies, emissions inventory and ambient air monitoring data indicate that TBRCI fugitive emissions are the major contributor to the high lead concentration in Arecibo and, therefore, are the focus of the Arecibo attainment plan, as discussed in Section IV. In order to comply with the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Secondary Lead Smelting (40 CFR part 63, subpart X) also known as the Maximum Available Control Technology (MACT) standard, TBRCI was required to implement control measures to lower the potential fugitive lead emissions in the main process building and in the handling operations. The PREQB Governing Board determined TBRCI was unable to comply with this regulation,[2] and, accordingly, the PREQB withdrew both the construction and operating permits for the facility.

The design value used for designating the area as nonattainment was based on monitoring data from 2010. For the purposes of calculating the nonattainment area emissions inventory, lead emissions data were taken from the PREQB's 2011 Emissions Inventory for the area. The EPA has determined that the 2011 base year emissions inventory estimates submitted are in compliance with CAA section 172(c)(3), are conservative and were developed in accordance with the EPA guidance. Details of the inventory are provided in the August 30, 2016 submittal. Table 1 identifies the base year emissions inventory for 2011.

ii. 2016 Attainment/Projection Inventory

While the PREQB has two source oriented monitors in Arecibo, there is no monitor in the area to provide background concentration. To address the lead background concentrations in the attainment modeling study, the EPA recommends a multi-source American Meteorological Society/Environmental Protection Agency Regulatory Model (AERMOD) be run using the background lead emissions from nearby facilities, projected to 2016. The municipalities analyzed for background lead emissions were Barceloneta, Ciales, Florida, Hatillo, and Utuado. Of these municipalities, Barceloneta is the only municipality in addition to Arecibo, which has reported lead emissions.

In accordance with the Lead Guidance[3] for the Attainment/Projection Inventory, the maximum allowable emissions should be included for the attainment year inventory, which includes only those sources within the modeling domain. The EPA modeling guidance, 40 CFR part 51 Appendix W provides advice on which sources need to be included explicitly (*i.e.,* as point sources) in the modeling and provides for including the impacts of smaller and diffuse sources through the use of background concentrations and other less specific techniques given the relatively lower significance of such sources to the SIP demonstration.

For Puerto Rico, allowable lead emissions projected to 2016 with controls or permit limits were used in the attainment modeling study. For existing facilities, allowable emissions with controls or permit limits were used to develop the inventory. Energy

[1] See the EPA document titled ''Addendum to the 2008 Lead NAAQS Implementation Questions and Answers'' dated August 10, 2012 located at *https://www.epa.gov/lead-air-pollution/lead-state-implementation-plan-sip-checklist-guide* and *https://www.epa.gov/lead-air-pollution/lead-pb-national-ambient-air-quality-standards-naaqs-implementation-guidance.*

[2] Puerto Rico SIP revision, Appendix G: Translation of Resolution R–15–6.

[3] Lead Guideline Document, USEPA, EPA–452/R–93–009, April 1993, *https://www.epa.gov/lead-air-pollution/lead-pb-national-ambient-air-quality-standards-naaqs-implementation-guidance.*

Answers and Sunbeam Synergy are permitted sources that are not under construction yet.[4] These sources did not exist in 2011 but were scheduled to start operation in 2016. Their potential allowable lead emissions with controls or permit limits were used for the 2016 projection inventory. The ANJ Airport lead emissions are from the EPA EIS/NEI System and were projected to 2016 using the methodology recommended by the EPA Office of Transportation and Air Quality (OTAQ). Details of the inventory are provided in the SIP submittal. The inventory was developed in accordance with CAA Section 172(c)(3) and the EPA Lead Guidance. Table 1 identifies the 2016 attainment/projection year emissions inventory for 2016.

TABLE 1—ARECIBO LEAD SIP, EMISSION SOURCES IN THE BASELINE EMISSIONS INVENTORY 2011 AND 2016 ATTAINMENT/PROJECTION YEAR EMISSIONS INVENTORY

Industry	Municipality	2011 Lead emissions (In tons/year)	2016 Lead attainment/projection year emissions inventory (In tons/year)
PREPA Cambalache	Arecibo	0.11	0.28
Energy Answers	Arecibo	DID NOT EXIST IN 2011	0.3059
TBRCI	Arecibo	1.21	0.01
Safetech Corporation	Arecibo	0.009	0.009
Eaton	Arecibo	0.000062	0.00075
ANJ Airport	Arecibo	0.00364	0.037
Abbott (Now Abbvie Ltd.)	Barceloneta	0.0088	0.0161
Pfizer Pharmaceuticals LLC	Barceloneta	0.001	0.0035
Merck Sharp & Dohme+	Barceloneta	0.00037	0.018
Sunbeam Synergy	Barceloneta	DID NOT EXIST IN 2011	0.11
Total		1.343	0.79025

c. Attainment Plan Modeling

The Puerto Rico modeling analysis was prepared using the EPA's preferred dispersion modeling system, AERMOD, consisting of the AERMOD model and two data input preprocessors AERMET and AERMAP, consistent with the EPA's Modeling Guidance at 40 CFR part 51 Appendix W and 40 CFR part 51.117. More detailed information on the AERMOD Modeling system and other modeling tools and documents can be found on the EPA Technology Transfer Network Support Center for Regulatory Atmospheric Modeling (SCRAM) (*http://www.the EPA.gov/ttn/scram/*) and in Puerto Rico's submittal for this proposed action (EPA–R02–OAR–2016–0559) on the *www.regulations.gov* Web site. A brief description of the modeling used to support the Commonwealth of Puerto Rico's attainment demonstration is provided below.

i. Modeling Approach

The following is an overview of the air quality modeling approach used to demonstrate compliance with the 2008 Lead NAAQS, in Puerto Rico's SIP submittal.

To develop the appropriate meteorological data for the area for use in the attainment demonstration, the PREQB used AERMOD pre-processors, AERMET and AERMAP to process site specific meteorological data collected at PREPA Cambalache. Data from San Juan Airport was also used to supplement the PREPA data in those instances where meteorological data may have been missing.

The PREQB used the EPA LEADPOST processor to calculate the lead three-month rolling average. To determine the lead background concentration that would be representative of the Arecibo area, the PREQB conducted a multi-source modelling analysis with projected or controlled emissions to 2016 of the facilities in the six municipalities (Arecibo, Barceloneta, Ciales, Florida, Hatillo and Utuado), including the Arecibo Airport. This approach was used because the PREQB does not have an Arecibo lead air quality monitor that is not affected by the emissions from TBRCI facility that would be representative of the Arecibo area.

The PREQB developed the 2011 base year and the 2016 control strategy emissions inventories for input in the air quality model to perform current and control dispersion modeling. The emissions inventory was used in the multi-source modeling scenario (see modeling protocol in SIP submittal Appendix C and Appendix C–1).

ii. Modeling Results

The Lead NAAQS compliance results of the AERMOD modeling are summarized in Table 2 below. As can be seen in Table 2, the maximum three-month rolling average predicted impact with the meteorological data (2006–2010) is less than the 2008 Lead NAAQS of 0.15 μg/m³ for the AERMOD modeling runs. Output from the LEADPOST processor which details all of the concentrations can be found in the August 30, 2016 submittal.

TABLE 2—SUMMARY RESULTS OF MODELING FOR 2016 ATTAINMENT DEADLINE

Pollutant	Avg. time	Maximum monthly predicted impact (μg/m³)	Maximum 3-high avg. predicted impact (μg/m³)	NAAQS (μg/m³)	Impact greater than NAAQS
Lead	3-month rolling	0.11318	0.09352	0.15	No

[4] Puerto Rico SIP, Appendix B: 2016 Emissions Projection Year Inventory, Arecibo Lead SIP.

The post control scenario used in the model is heavily influenced by the operating status of TBRCI. Based on the post control scenario of TBRCI not operating, the model predicts an impact of 0.09352 μg/m³. This data indicates significant reductions in air quality impacts with the non-operation closure of the TBRCI facility resulting in attainment of the lead NAAQS. The EPA has reviewed the modeling that Puerto Rico submitted to support the attainment demonstration for the Arecibo Area and has determined that this modeling is consistent with CAA requirements, 40 CFR part 51, Appendix W, and the EPA Lead Guidance for lead attainment demonstration modeling.

d. RACM/RACT Requirements

CAA section 172(c)(1) requires that each attainment plan provide for the implementation of all RACM for stationary sources as expeditiously as practicable for attainment of the NAAQS. The EPA interprets RACM, including RACT, under CAA section 172, as measures that a State determines to be both reasonably available and to contribute to attainment as expeditiously as practicable in the nonattainment area. A comprehensive discussion of the RACM/RACT requirement for lead attainment plans can be found in the EPA guidance (footnote 3).

TBRCI was the only source of lead emissions of 0.5 tpy or more. TBRCI was the primary source of lead emissions in the Arecibo area contributing to monitored nonattainment. Therefore, the RACT/RACM requirements would focus primarily on TBRCI. However, on June 12, 2014, TBRCI notified the PREQB that it would ''temporarily cease operations''. As discussed in Section IV.b.1 above, on August 19, 2015, the PREQB withdrew both the Construction Permit and Title V Operation Permit for TBRCI because the facility was unable to comply with Puerto Rico Rule 203(b)(1) and Puerto Rico Rule 604(b) as well as CAA Section 112 (See footnote 3). Since the PREQB withdrew TBRCI permits, TBRCI is no longer operating. Since TBRCI is no longer operating, there are no further RACT or RACM necessary for the area to attain the lead NAAQS as expeditiously as practicable or by the December 2016 attainment date. The EPA notes that TBRCI has no permits to operate as a secondary lead smelter facility. Should TBRCI or any other entity decide to start up business as a secondary lead smelter facility in the Arecibo area, the company will need to obtain the appropriate permits to operate in accordance with all applicable laws and regulations of the Commonwealth of Puerto Rico and the EPA, including the Commonwealth of Puerto Rico Regulations for the Control of the Atmospheric Pollution (RCAP), the Puerto Rico Environmental Public Policy Act, Act 416–2004 as amended (PREPPA Act 416) and CAA Section 112 MACT requirements. These laws and regulations ensure that any new source of lead emissions, or any emission, will not interfere with attainment of the NAAQS.

With respect to fugitive emissions and for all emission sources, the Puerto Rico SIP already includes control measures located in RCAP Rule 404 (also referenced in the August 30, 2016 submittal).[5]

- *RCAP Rule 404:* Where no person shall cause or permit any materials to be handled, transported, or stored in a building, its appurtenances, or a road to be used, constructed altered, repaired, or demolished, without taking reasonable precautions to prevent particulate matter (including particulate matter containing lead) from becoming airborne including but not limited to:
- *Rule 404(A)(1):* The use, as much as possible, of water or suitable chemicals for chemical stabilization and the control of dust in the demolition of a building or structures, construction operations, quarrying operations, the grading of roads, or the clearing of land;
- *Rule 404(A)(4):* The covering, at all times when in motion, of open bodied trucks transporting materials likely to give rise to airborne dusts;
- *Rule 404(A)(3):* The installation and use of hoods, fans, and fabric filters to enclose and vent dusty materials to control harmless fugitive emissions. Adequate containment methods shall also be employed during sandblasting or other similar operations;
- *Rule 404(A)(6):* The paving of road ways and their maintenance in a clean condition;
- *Rule 404(B):* Where no person shall cause or permit the discharge of visible emissions of fugitive dust beyond the boundary line of the property on which the emissions originate;
- *Rule 404(C):* Where air pollutant escape from a building or equipment and cause a nuisance or violate any regulations, the Board may order that the building or equipment in which processing, handling, and storage are done, be tightly closed and/or ventilated so that all emissions from the building or equipment are controlled to remove or destroy such air pollutants before being discharged to the open air; and,
- *Rule 404(E):* Where any new or modified source, the construction of which causes or may cause fugitive emissions, shall apply for a permit as required in Rule 203.

e. RFP Requirements

Section 172(c)(2) of the CAA requires that an attainment plan includes a demonstration that shows reasonable further progress to meeting air quality standards. The term ''reasonable further progress'' is defined in CAA section 171 to mean ''such annual incremental reductions in the emissions of the relevant air pollutant as are required . . . for purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date.'' In accordance with CAA section 172(c)(1), the RFP requires implementation of all RACM/RACT as ''expeditiously as practicable.''

Historically, for some pollutants, RFP has been met by showing annual incremental emission reductions generally sufficient to maintain linear progress toward attainment by the applicable attainment date. As stated in the final Lead Rule (73 FR 67039), the EPA concluded that it was appropriate that RFP requirements be satisfied by the strict adherence to an ambitious compliance schedule, which is expected to periodically yield significant emission reductions. For lead nonattainment areas, RFP is to be achieved by implementing an emission reduction compliance schedule for stationary sources outlined in the SIP. The stationary source of concern in the Arecibo area is TBRCI. As discussed in Section V.d, TBRCI is no longer operating. Therefore the EPA proposes to find that RFP has been achieved in the Arecibo area because the emission reduction compliance schedule for the one stationary source in question, TBRCI, has been achieved by no longer operating.

f. Contingency Measures

Section 172(c)(9) of CAA requires that SIPs include specific contingency measures to be undertaken if the area fails to make reasonable further progress or to attain the 2008 lead NAAQS by the attainment date which is December 31, 2016, for Arecibo, Puerto Rico.

Upon determination by the EPA that the area has failed to achieve or maintain RFP, or attain the lead NAAQS by the statutory attainment date, these contingency measures will take effect without further action by the State or the Administrator. The amount of reductions yielded by implementation of contingency measures should be quantified and, for a five-year plan, the

[5] 62 FR 3213 (Jan. 22, 1997) (approval of RCAP 404 into SIP); 40 CFR 52.2723.

measures should reduce emissions by 20 percent of the total amount needed for attainment. Under certain circumstances, this amount may be derived by reference to reductions in ambient air concentrations (2008 lead NAAQS Implementation Q&A, July 8, 2011, EPA).

The PREQB asserts that a comprehensive evaluation of all known lead emissions sources has already been accomplished and that RACT (or greater) levels of controls have been addressed, as discussed in the control measures section of the August 30, 2016 submittal. Contingency measures are intended to address any lead emissions that would cause any future exceedances of the lead NAAQS. The PREPPA Act 416, Title II, Section 9(A)(7) provides PREQB with the authority to order persons causing or contributing to a condition which harms the environment and natural resources or which poses an imminent danger for the public health and safety, to immediately diminish or discontinue their actions. Also, PREPPA Act 416, Title II, Section 9(A)(8) provides the authority to issue orders to do or forbear or to cease and desist so as to take the preventive or control measures that, in its judgment, are necessary to achieve the purposes of this Act and the regulations promulgated thereunder.

As discussed above, RCAP Rule 404, which is approved into the SIP, contains specific provisions to control fugitive emissions at any facility in Puerto Rico are intended to satisfy the CAA 172(c)(9) contingency measure requirements.

In addition to the contingency measures in the Lead SIP, the PREQB included actions it will take to better characterize the source of any exceedance:

- If during any three-month rolling period, if two samples at the same monitor in the Arecibo Nonattainment Area are reported to exceed 0.15 $\mu g/m^3$, along with the activities above, the PREQB will increase the sampling frequency at that monitor to once every three days;
- In addition, if during any three-month rolling period, if three samples at the same monitor in the Arecibo Nonattainment Area are reported to exceed 0.15 $\mu g/m^3$, along with the activities above, the PREQB will conduct daily sampling at that monitor for a period of 30 days.

The EPA has determined that the PREQB's SIP addresses the requirement for contingency measures pursuant to CAA 172(c)(9) and therefore EPA proposes to approve these contingency measures.

g. Attainment Date

Puerto Rico provided a modeling demonstration to attain the level of the 2008 Lead NAAQS for the Arecibo Area by no later than five years after the Area was designated nonattainment. The modeling indicates that the Arecibo Area will have attaining data for the 2008 Lead NAAQS by December 31, 2016. On June 12, 2014, TBRCI notified the PREQB that it would ''temporarily cease operations''. As discussed in Section IV.b.1 above, on August 19, 2015, the PREQB withdrew both the Construction Permit and the Title V Operating Permit for TBRCI because the facility was unable to comply with subject regulations of Puerto Rico RCAP Rules 203(b)(1) and 604(b) as well as the CAA Section 112 (see footnote 3). The EPA notes that since September 2015, the data from the source oriented Arecibo air monitoring site has been below the three-month rolling average for the Lead NAAQS. In addition, the modeling demonstrates compliance with the Lead NAAQS. Consequently, the EPA proposes that the PREQB has provided an attainment demonstration SIP that shows how the Arecibo area will meet the Lead NAAQS.

V. What are the EPA's conclusions?

The EPA is proposing to approve into the SIP Puerto Rico's lead attainment plan for the Arecibo Area. Specifically, the EPA is proposing to approve Puerto Rico's August 30, 2016 submittal, which includes the attainment demonstration, base year emissions inventory, modelling, and contingency measures and addresses RACM/RACT and the RFP plan. Permits for the lead smelter, TBRCI, documented as the source of high lead emissions, have been withdrawn and it is not operating at this time. Accordingly, RACM, RACT and RFP analyses have been met. The requirement for RACM/RACT and RFP plan is satisfied because the Commonwealth of Puerto Rico demonstrated that the Area will attain the 2008 Lead NAAQS as expeditiously as practicable, and could not implement any additional measures to attain the NAAQS any sooner.

The EPA notes that since September 2015, the data from the source oriented Arecibo air monitoring site has been below the three-month rolling average for the Lead NAAQS.

The EPA's review of the materials submitted indicates that Puerto Rico has developed the Lead attainment plan in accordance with the requirements of the CAA, 40 CFR part 51 and the EPA's technical requirements for a Lead SIP. Therefore, the EPA is proposing to approve into the SIP the Lead attainment plan for Arecibo, Puerto Rico.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve 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 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).

In addition, this proposed rulemaking action 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 the 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, Incorporation by reference, Intergovernmental relations, Lead, Reporting and recordkeeping requirements.

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

Dated: October 27, 2016.

Judith Enck,

Regional Administrator, Region 2.

[FR Doc. 2016–26729 Filed 11–4–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2016–0087]

RIN 2127–AK92

Federal Motor Carrier Safety Administration

49 CFR Part 393

[Docket No. FMCSA–2014–0083]

RIN 2126–AB63

Federal Motor Vehicle Safety Standards; Federal Motor Carrier Safety Regulations; Parts and Accessories Necessary for Safe Operation; Speed Limiting Devices

AGENCY: National Highway Traffic Safety Administration (NHTSA) and Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation.

ACTION: Extension of comment period.

SUMMARY: NHTSA and FMCSA have received requests to extend the comment period for their proposal that would require vehicles with a gross vehicle weight rating of more than 11,793.4 kilograms (26,000 pounds) to be equipped with a speed limiting device and that such device be maintained for the service life of the vehicle. In the proposal, NHTSA and FMCSA established a deadline for the submission of written comments of November 7, 2016. The Agencies have also received a letter opposing any extension of the comment period. To ensure that all interested parties have a sufficient amount of time to fully develop their comments, the Agencies are extending the deadline for the submission of written comments on the proposal, including comments on the Preliminary Regulatory Impact Analysis and Initial Regulatory Flexibility Analysis and Draft Environmental Assessment accompanying the proposal, by 30 days.

DATES: Written comments must be received by December 7, 2016.

ADDRESSES: You may submit comments, identified by one or both of the docket numbers in the heading of this document, by any of the following methods:

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

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the discussion under the Public Participation heading of the September 7, 2016 notice of proposed rulemaking (81 FR 61942). Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT:

NHTSA: For technical issues, you may contact Mr. Wayne McKenzie, Office of Crash Avoidance Standards, Telephone: (202) 366–4000. Facsimile: (202) 366–7002. For legal issues, you may contact Mr. David Jasinski, Office of Chief Counsel, Telephone (202) 366–2992. Facsimile: (202) 366–3820. You may send mail to these officials at: The National Highway Traffic Safety Administration, Attention: NVS–010, 1200 New Jersey Avenue SE., Washington, DC 20590.

FMCSA: For technical issues, you may contact Mr. Michael Huntley, Vehicle and Roadside Operations, Telephone (202) 366–5370. Facsimile: (202) 366–8842. For legal issues, you may contact Mr. Charles Medalen, Office of Chief Counsel, Telephone (202) 366–1354. Facsimile: (202) 366–3602. You may send mail to these officials at: The Federal Motor Carrier Safety Administration, Attention: MC–PSV, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: On September 7, 2016, NHTSA and FMCSA published a notice of proposed rulemaking (NPRM) proposing regulations that would require vehicles with a gross vehicle weight rating of more than 11,793.4 kilograms (26,000 pounds) to be equipped with a speed limiting device initially set to a speed no greater than a speed to be specified in a final rule and would require motor carriers operating such vehicles in interstate commerce to maintain functional speed limiting devices set to a speed no greater than a speed to be specified in the final rule for the service life of the vehicle.

The American Trucking Associations (ATA) (with the support of the Commercial Vehicle Safety Alliance), the EMA Truck & Engine Manufacturers Association (EMA) and the Owner Operator Independent Drivers Association (OOIDA) have requested that NHTSA and FMCSA extend the public comment period beyond the November 7, 2016 date specified in the NPRM. The ATA and EMA requested a 30-day extension. In support of its request, ATA states that the proposal differs significantly from its initial petition for rulemaking in a number of areas, and additional time is needed to confer with its membership on these issues. EMA states that at least 30 additional days is needed to more thoroughly analyze the issues in order to develop detailed and complete comments.

The OOIDA requested a 60-day extension of the comment period. In support of its request, OOIDA states that it will take a considerable amount of time and resources to develop meaningful comments from its members, many of which are on the road and away from home upwards of 250 days a year.

NHTSA and FMCSA have also received a letter signed by a number of safety advocacy groups and individuals opposing any extension of the comment period. The letter states that in the 10 years since the petitions for rulemaking were initially filed, truck crashes and fatalities have increased at rates faster than overall crashes and fatalities, and that additional time for comment is not

necessary and would further delay issuance of a final rule implementing the proposal.

In considering the requests to extend the public comment period and the letter opposing any extension, NHTSA and FMCSA weighed the complexity and importance of this rulemaking and the rationale provided in support of each position. We have determined that there is good cause to grant the requests to extend the comment period, and have decided to extend the comment period for an additional 30 days. The extension is in the public interest since it will provide the public additional time to prepare and submit useful technical information and comments that should benefit Agency decision-making in this rulemaking action. Accordingly, NHTSA and FMCSA will extend the period for the submission of written comments in this proceeding to December 7, 2016. In addition, NHTSA and FMCSA are extending the comment period for the Preliminary Regulatory Impact Analysis and Initial Regulatory Flexibility Analysis and the Draft Environmental Assessment, which have been placed in the rulemaking docket, until December 7, 2016 as well.[1]

Issued pursuant to authority delegated in 49 CFR 1.81 and 1.95 on: November 2, 2016.

Raymond R. Posten,

Associate Administrator for Rulemaking, National Highway Traffic Safety Administration.

Issued pursuant to authority delegated in 49 CFR 1.81 and 1.87.

Larry W. Minor,

Associate Administrator for Policy, Federal Motor Carrier Safety Administration.

[FR Doc. 2016–26816 Filed 11–4–16; 8:45 am]

BILLING CODE 4910–59–P

[1] A notice of availability of the Draft Environmental Assessment specifically seeking comment on the Draft Environmental Assessment was published in the **Federal Register** on September 29, 2016. See 81 FR 67056.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Chapter V

[Docket No. NHTSA–2016–0090], Notice 2

Federal Automated Vehicles Policy

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of public meeting.

SUMMARY: NHTSA is announcing a public meeting to seek input on the recently released Federal Automated Vehicles Policy (the Policy). The Policy is guidance that seeks to speed the delivery of an initial regulatory framework for highly automated vehicles (HAVs) as well as encourage conformance with best practices to guide manufacturers and other entities in the safe design, development, testing, and deployment of HAVs.

The public meeting will be an open listening session to provide as great an opportunity for comment as possible. All comments will be oral and any presentations should be submitted to the docket for inclusion. Additionally, all interested parties, either not in attendance or who are unable to speak, are invited to share any views or information they would like considered through the docket as well.

DATES: NHTSA will hold the public meeting on November 10, 2016, in Washington, DC. The meeting will start at 9 a.m. and continue until 4 p.m. local time. Check-in (through security) will begin at 8 a.m. Attendees should arrive early enough to enable them to go through security by 9 a.m.

ADDRESSES: The meeting will be held at the United States General Services Administration, Regional Office Building located at 301 7th Street (7th & D Streets) SW., Washington, DC 20407. This facility is accessible to individuals with disabilities.

Written Comments: Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments presented at the public meeting. Please submit all written comments no later than November 22, 2016, by any of the following methods:

- *Federal Rulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments. To submit comments on the Federal Automated Vehicles Policy, please use docket NHTSA–2016–0090.

NHTSA issued a separate notice and created a separate docket for the Paperwork Reduction Act information collection request related to the Federal Automated Vehicles Policy (81 FR 65709). In that notice, NHTSA estimated the potential burden associated with submitting information to NHTSA as recommended by the Federal Automated Vehicles Policy. To submit comments on the information collection request related to the Federal Automated Vehicles Policy, please use docket NHTSA–2016–0091.

- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal Holidays.
- *Fax:* 202–366–1767.

Instructions: All submissions must include the agency name and associated docket number. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act discussion below.

Docket: For access to the docket go to *http://www.regulations.gov* at any time or to 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. Telephone: 202–366–9826.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), you may visit *http://www.dot.gov/privacy.html.*

Confidential Business Information: If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information to the Chief Counsel, NHTSA, at the address given under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above. When you send a comment containing information claimed to be confidential business information, you should submit a cover letter setting forth the information specified in our confidential business information regulation (49 CFR part 512).

FOR FURTHER INFORMATION CONTACT: If you have questions about the public meeting, please contact Ms. Yvonne Clarke, Program Assistant, Office of Vehicle Safety Research at (202) 366–1845 or by email at *av_info_nhtsa@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

On September 20, 2016, DOT released the Federal Automated Vehicles Policy. The Policy is intended to ensure automated vehicle technologies are safely introduced and achieve their full safety potential by removing potential roadblocks to the integration of innovative automotive technology. The full Policy can be found at *www.nhtsa.gov/AV*.

On September 23, 2016, DOT published a notice requesting written public comment regarding the contents of the Policy.[1] Those comments are due November 22, 2016. Concurrent with the notice requesting public comment, DOT published a separate notice opening a separate docket for commenters to respond to the proposed information collection request for the Policy (81 FR 65709).

Meeting

NHTSA has laid out four sections within the Policy that focus on priority areas related to HAVs. During the morning session of the meeting, the Agency will seek public input on those four sections to include: Vehicle Performance Guidance for Automated Vehicles, Model State Policy, NHTSA's Current Regulatory Tools, and Modern Regulatory Tools. The focus will be to gather feedback regarding how manufacturers and other entities have understood these four areas of interest, if there are challenges foreseen, suggestions for clarification or more thorough explanation, recommended improvements, or other input.

During the afternoon session of the meeting, the Agency will seek specific input from the public on the safety assessment letter. The intent of the policy is for manufacturers and other entities involved in the design, development, validation, testing and deployment of automated vehicles to voluntarily submit to the Agency a letter describing how they are meeting the 15 safety areas in the vehicle performance guidance outlined in the policy.

NHTSA is seeking input to refine the overall structure and content of the safety assessment letter from the parties responsible for the preparation and submission of these letters. This input will aid the Agency in developing a template for entities to use as well as further refine our anticipated internal processes necessary to review submissions in a timely fashion.

The meeting announced by this notice is being held during the open comment period for the Policy to provide an opportunity for individuals to provide oral feedback regarding the four sections of the Policy.

Registration is necessary for all attendees. Attendees, including those who do not plan to make any oral remarks at the meeting, should register at *https://docs.google.com/forms/d/12_tCd_PEWBiPCLnp1KmsSXV9vsoV6iAm1o_n736lbds/viewform?edit_requested=true* by November 8, 2016. Please provide your name, email address, and affiliation, indicate if you wish to offer oral technical remarks, and please indicate whether you require accommodations such as a sign language interpreter. Space is limited, so advanced registration is highly encouraged.

Although attendees will be given the opportunity to offer technical remarks, there will not be time for attendees to make audio-visual presentations during the meeting. Additionally, NHTSA may not be able to accommodate all attendees who wish to make oral remarks. All interested parties, not in attendance, unable to comment verbally, or otherwise, are invited to share any views or information they would like considered in the docket.

NHTSA will conduct the public meeting informally, and technical rules of evidence will not apply. We will arrange for a written transcript of the meeting. You may make arrangements for copies of the transcripts directly with the court reporter. The transcript will also be posted in the docket when it becomes available.

Should it be necessary to cancel the meeting due to inclement weather or other emergency, NHTSA will take all available measures to notify registered participants.

Draft Meeting Agenda

8:00–9:00—Arrival/Check-In
9:00–12:00—Public Meeting Session on the Federal Automated Vehicles Policy Document
12:00—Lunch (on your own)/Arrival/Check-In
13:00–15:30—Invited Technical Comments/Other Oral Remarks on Safety Assessment Letter
15:30–16:00—Open Microphone
16:00—Adjourn

Morning Session Meeting Topics

The morning session of the meeting will provide an opportunity for individuals to express feedback regarding the four sections of the Policy. NHTSA has issued the Policy to ensure automated vehicle technologies are safely introduced and achieve their full safety potential by removing potential roadblocks to the integration of innovative automotive technology.

- *Vehicle Performance Guidance for Automated Vehicles:* This section, which is addressed to manufacturers, developers, and other organizations, outlines a 15 point ''Safety Assessment'' for the safe design, development, validation, testing, and deployment of automated vehicles.
- *Model State Policy:* This section describes the separate and distinct responsibilities of the Federal and State governments for regulation of HAVs, and recommends policy areas for States to consider with a goal of generating a consistent national framework for the validation, testing, and deployment of highly automated vehicles.
- *Current Regulatory Tools:* This section outlines DOT's current regulatory tools that can be used in a more timely and effective fashion to accelerate the safe development of HAVs, such as interpreting current rules to allow for greater flexibility in design and providing limited exemptions to allow manufacturers to gain experience with nontraditional vehicle designs.
- *Modern Regulatory Tools:* This section identifies potential new regulatory tools and statutory authorities that may aid the safe and efficient deployment of new lifesaving technologies.

Afternoon Session Meeting Topics

The afternoon session of the meeting provides an opportunity for individuals to specifically comment on the Safety Assessment Letter to NHTSA.[2] As an example, the Agency is interested in how to structure a letter such that it contains enough information to enable the public and the Agency to understand how the submitter of the letter is meeting the 15 safety areas, but avoids revealing confidential business information or inadvertently creating a competitive disadvantage to anyone submitting the letter. Concurrent with the Policy, DOT also opened a docket for commenters to respond to this proposed information collection request for the Policy (81 FR 65709).

Specifically, commenters are asked to discuss the following topics at the meeting:

- *Content and Structure*

The Agency seeks comment on how much and what types of information should be included in the letter to enable the public and the Agency to understand the submitter's process, plan, approach, or other areas. In the interest of achieving a reasonable degree

[1] 81 FR 65703 (September 23, 2016), NHTSA–2016–0090.

[2] Ibid., 15.

of consistency in the letters it receives, the Agency also seeks comments on how the letters should be formatted. Finally, what is the expected length of a well formatted letter?

• *Identification of Responsible Manufacturers and Other Entities*

The Agency seeks comment on the entities that should be responsible for the submission of these letters. Commenters should also consider who should submit in these letters in the event that multiple parties collaborate together.

• *Transparency*

The Agency seeks to be as transparent as possible with these letters, and expects to make them public to increase public understanding and build consumer confidence. If commenters believe that certain portions of the letter should not be made available to the general public, please identify those portions and explain the reasons for that belief and how withholding those portions might affect public understanding and confidence. Commenters should discuss what format the agency should use to present the public display of the information.

• *Agency Response Processes*

The Agency will respond to persons who comment on safety assessment letters received by the Agency. Commenters should focus on what form this response should take, as well as what information the agency should include. Commenters should also discuss their views on making these responses available to the public.

• *Timing*

The Agency seeks comments on the timing proposed in the Policy document for the submission of the letters. Commenters should discuss what types of changes or updates are important enough to trigger the need to submit a new letter. In the event that changes or updates to automated features make it necessary to submit a new letter, commenters should discuss what time frame would be appropriate for re-submittal of the assessment letters.

Nathaniel Beuse,

Associate Administrator for Vehicle Safety Research.

[FR Doc. 2016–26561 Filed 11–4–16; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register

Vol. 81, No. 215

Monday, November 7, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Kootenai National Forest: Lincoln County; Montana; Starry Goat Project EIS

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to disclose the environmental effects of commercial and non-commercial vegetation management activities, prescribed burning, watershed and recreation improvement activities. Access management changes and other design features are included to protect resources and facilitate management activities. The project is located in the Callahan planning subunit on the Three Rivers Ranger District, Kootenai National Forest, Lincoln County, Montana, near Troy, Montana.

DATES: Comments concerning the scope of the analysis must be received by December 7, 2016. The draft environmental impact statement is expected in June 2017 and the final environmental impact statement is expected in December 2017.

ADDRESSES: Send written comments to Kirsten Kaiser, District Ranger, Three Rivers Ranger District, 12858 U.S. Highway 2, Troy, MT 59935. Comments may be submitted online at *https://cara.ecosystemmanagement.org/Public//CommentInput?Project=49837*, or by email to: *comments-northern-kootenai-three-rivers@fs.fed.us,* or via facsimile to 406–295–7410.

FOR FURTHER INFORMATION CONTACT: Miles Friend, Project Team Leader, Three Rivers Ranger District, 12858 U.S. Highway 2, Troy, MT 59935. Phone: (406) 295–4693. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Starry Goat project area is immediately west of Troy, Montana, and runs from the Kootenai River west to the boundary between the Kootenai and Idaho Panhandle National Forests. The project area encompasses approximately 90,776 acres (48,471 acres in Montana; 42,305 acres in Idaho, all administered by the Kootenai National Forest). Callahan Creek, Brush Creek, Ruby Creek, and Star Creek are the major drainages in the project area; all flowing into the Kootenai River at the project area boundary. The legal description includes Townships 30,31, and 32 North, Ranges 33 and 34 West, Lincoln County, Montana; and Townships 58, 59, 60, and 61 North, Ranges 2 and 3 East, Bonner and Boundary County, Idaho.

Purpose and Need for Action

The purpose and need for this project is to: (1) Promote resilient vegetation conditions by managing towards the 2015 Forest Plan desired conditions for landscape-level vegetation patterns, structure, patch size, fuel loading, and species composition; (2) maintain or improve hydrologic connectivity, water quality and native aquatic species habitat; (3) improve big game winter range conditions and promote forage opportunities while maintaining secure habitat for wildlife; (4) provide a variety of wood products to the American public, and contribute to the local economy by generating jobs and income; (5) maintain and improve the recreation opportunities in the project area; (6) reduce the potential for high intensity wildfire while promoting desirable fire behavior characteristics and fuel conditions.

Proposed Action

The proposed action includes timber harvest and associated fuels treatments, prescribed burning, recreation improvements and watershed work to address the purpose and need. The proposed action includes:

(1) Approximately 1,550 acres of regeneration harvest and 553 acres of intermediate harvest. These treatments would be accomplished through 1,846 acres of tractor harvest and 257 acres of skyline harvest. Pre-commercial thinning (PCT) is proposed on 395 acres within the project area. Approximately 132 acres of the proposed PCT would occur within the Callahan Lynx Analysis Unit (LAU) and treatment would be consistent with Forest Plan standard FW–STD–WL–01. Pruning may occur along with PCT or by itself. There are 17 units proposed that would create or contribute to 14 different openings larger than 40 acres. This action requires a 60 day public review and Regional Forester approval (FSM 2471.1). This document serves as the beginning of the 60 day comment period. The largest of these treatment units would be approximately 231 acres in size. Treatments are proposed within old growth stands in the drier habitat types in Douglas-fir/ponderosa pine dominated stands to contribute to their stand resistance and resiliency (FW–GDL–VEG–01). Approximately 136 acres of harvest treatments are proposed within old growth and 113 acres of treatment within recruitment potential old growth. There would be 3,351 acres of fuels treatments proposed within old-growth stands or portions of those stands.

(2) In an effort to return fire to the landscape and to promote wildlife foraging opportunities approximately 9,950 acres of prescribed burning is being proposed. Approximately 3,458 acres in the WUI are proposed for burning. Approximately 5,870 acres of this burning will occur in the Inventoried Roadless Areas of which 3,248 acres is in Idaho and 2,622 acres is in Montana.

(3) Implementation of best management practice (BMP) work and road maintenance work would be implemented on Forest Service timber haul roads. Approximately 54 miles of National Forest System road (NFSR) would be improved to meet State BMPs for water quality.

(4) Approximately 12.6 miles of active road storage, 4.95 miles of active decommissioning, and 5.1 miles of passive decommissioning would be done on roads not currently open for public motorized travel. Roads identified in the Travel Analysis as needed for long-term management of NFS lands would be put into intermittent stored service (storage). Roads identified as not needed for future management would be decommissioned. Both storage and

decommissioning could have a range of treatments including simple barrier installation (passive treatment) where watershed impacts are not likely, to active treatments ranging from removing culverts to full recontouring where risks to watersheds are high. Non-motorized access would be facilitated with improved tread on road segments identified by the public as important for use. In addition, there are three sites with proposed watershed actions on existing roads including: Callahan sediment trap improvement on NFSR 414, Raymond Creek bridge removal, and Goat Creek road culvert upgrade.

(5) The district is proposing fuel mitigation and roadside thinning to facilitate fuels reduction, safe ingress and egress for the public in case of a wildland fire and road maintenance within the project area. Approximately 779 acres of thinning and 78 acres of road maintenance are proposed along only the Forest Service roads open to yearlong motorized use.

(6) Proposed Starry Goat activities would impact approximately 1,372 acres of existing grizzly bear core, nearly all of which is associated with harvest access and haul on currently barriered roads. A minor access management change at the top of Smith Mountain also contributes to this total. Gated roads that could be barriered to provide the necessary in-kind replacement of core have been identified. These roads currently do not allow for public motorized use during the bear year. Once these road are barriered and placed into core, no motorized use could occur on these roads during the bear year including administrative use.

(7) Proposed Recreation Improvements include the Threemile Mountain Bike Flow Trail and the McConnell Snowshoe Trail. The bike trail system consists of both a descent oriented ''Flow Trail'' and a ''Cross-Country Bike'' style loop. The ''Flow trail'' would consist of approximately 7 miles of new construction. The ''Cross-Country Bike loop'' would consist of approximately 6 miles of new trail construction and would be pursued as time and funding permits. The McConnell Snowshoe Trail includes approximately 4 miles of new construction.

(8) The Star Creek Quarry, North Fork 7 Mile Quarry, Three Mile Quarry and Airport Garvel Pit are proposed for free use rock picking where the public would be able to get a personal use permit (~2 tons per permit). The District proposes to increase the Airport Pit by approximately 3 acres and the North Fork 7 Mile Quarry by approximately 1 acre over the life of the pits.

Possible Alternatives

The Forest Service will consider a range of alternatives. One of these will be the ''no action'' alternative in which none of the proposed action would be implemented. Additional alternatives may be included in response to issues raised by the public during the scoping process or due to additional concerns for resource values identified by the interdisciplinary team.

Responsible Official

The Forest Supervisor of the Kootenai National Forest, 31374 U.S. Highway 2, Libby, MT 59923–3022, is the Responsible Official. As the Responsible Official, I will decide if the proposed action will be implemented. I will document the decision and rationale for the decision in the Record of Decision. I have delegated the responsibility for preparing the draft environmental impact statement (DEIS) and final environmental impact statement (FEIS) to the District Ranger, Three Rivers Ranger District.

Nature of Decision To Be Made

Based on the purpose and need, the Responsible Official reviews the proposed action, the other alternatives, the environmental consequences, and public comments on the analysis in order to make the following decisions:

(1) Whether to implement timber harvest and associated fuel reduction treatments, prescribed burning, watershed work, and recreation improvements, including the design features and potential mitigation measures to protect resources; and if so, how much, and at what specific locations.

(2) What, if any, specific project monitoring requirements are needed to assure design features and potential mitigation measures are implemented and effective, and to evaluate the success of the project objectives. Preliminary project monitoring needs identified include effectiveness of BMP work. A project-specific monitorng plan will be developed.

Preliminary Issues

Initial analysis by the interdisciplinary team has brought forward an issue that may affect the design of the project.

(1) There are 17 harvest units that would contribute to 14 openings larger than 40 acres. This action requires a 60 day public review and Regional Forester approval (FSM 2471.1). This document serves as the beginning of the 60 day public review period.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. The interdisciplinary team will continue to seek information, comments, and assistance from Federal, State, and local agencies, tribal governments, and other individuals or organizations that may be interested in, or affected by, the proposed action. There are several collaborative groups in the area that the interdisciplinary team will interact with during the analysis.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. A more detailed scoping letter is available on request as well as on the Kootenai National Forest projects page located here: *http://www.fs.usda.gov/projects/kootenai/landmanagement/projects*.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered.

Dated: October 31, 2016.

Christopher S. Savage,

Forest Supervisor.

[FR Doc. 2016–26821 Filed 11–4–16; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Notice Corrected Date of Public Meeting of the Indiana Advisory Committee; Correction

AGENCY: Commission on Civil Rights.

ACTION: Notice; correction.

SUMMARY: The U.S. Commission on Civil Rights published a document in the **Federal Register** of October 3, 2016, concerning the announcement of a meeting on November 15, 2016. The document contained incorrect dates.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, 312–353–8311.

Correction

In the **Federal Register** of October 3, 2016, in FR Doc. 2016–23729, correct the **SUMMARY** and **DATES** captions to read:

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules

and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Indiana Advisory Committee (Committee) will hold a meeting on Friday, December 9, 2016, at 4:00 p.m. EST for the purpose of discussing a draft report regarding the school to prison pipeline in the state.

DATES: The meeting will be held on Friday, December 9, 2016, at 4:00 p.m. EST.

Dated: November 1, 2016.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2016–26777 Filed 11–4–16; 8:45 am]

BILLING CODE 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: Local Update of Census Addresses Operation.

OMB Control Number: 0607–XXXX.

Form Number(s): D–2001—Contact Information Update Form, D–2001–SP—Contact Information Update Form (Spanish), D–2002—Registration Form, D–2002–SP—Registration Form (Spanish), D–2003—Product Preference Form, D–2003–SP—Product Preference Form (Spanish), D–2003–SG–GIS Preference/County Selection Form (State Governments), D–2004—Confidentiality and Security Guidelines, D—2004–SP—Confidentiality and Security Guidelines (Spanish), D–2005—Confidentiality Agreement Form, D–2005–SP—Confidentiality Agreement Form (Spanish), D–2006—Self-Assessment Security Checklist, D–2006–SP—Self-Assessment Security Checklist (Spanish), D–2007—Address List, D–2007–SP—Address List (Spanish), D–2008—Address List Add Page, D–2008–SP—Address List Add Page (Spanish), D–2009—Address Count List, D–2009–SP—Address Count List (Spanish), D–2010—Map Sheet to Block Number Relationship List, D–2010–SP—Map Sheet to Block Number Relationship List (Spanish), D–2011—Inventory Return Form, D–2011–SP—Inventory Return Form (Spanish), D–2012—Destruction or Return Form, and D–2012–SP—Destruction or Return Form (Spanish).

Type of Request: Regular Submission.

Number of Respondents: 40,000.

Average Hours per Response: 21 hours on average; will vary by number of addresses associated with government.

Burden Hours: 845,600.

Needs and Uses: The U.S. Census Bureau developed the Local Update of Census Addresses Operation (LUCA) prior to the 2000 Census to meet the requirements of the Census Address List Improvement Act of 1994, Public Law 103–430. The Census Bureau will use information collected through LUCA to help develop the housing unit and group quarters (*e.g.,* college dormitory, nursing home, correctional facility) address information that it will need to conduct the decennial census. LUCA is voluntary for governmental units. Participating governments may review the Census Bureau's Title 13 U.S.C. confidential list of individual living quarters addresses and provide to the Census Bureau address additions, corrections, deletions, and location coordinates (latitude/longitude). Participating governments also may provide spatial and attribute updates for roads. Governments electing to participate in LUCA also provide contact information, certification of their agreement to maintain the confidentiality of the Census Bureau address information, responses regarding their physical and information technology security capability, product media preference information, shipment inventory information, and certification of their destruction or return of materials containing confidential data.

LUCA will be available to tribal, state, and local governments, the District of Columbia, and Puerto Rico (or their designated representatives) in areas for which the Census Bureau performs a pre-census Address Canvassing Operation. A majority of governments will have some area that will be included in the Address Canvassing Operation. LUCA is available to legally defined federally recognized Native American and Alaska Native areas (including the Alaska Native Regional Corporations), states, governmentally active counties and equivalent entities, incorporated places, and legally defined Minor Civil Divisions (MCDs) for which the Census Bureau reports data. LUCA will occur between January 2017 and June 2020. LUCA comprises five stages:

- Advance Notice
- Invitation
- Address Review
- Feedback
- Closeout

Advance Notice

The Census Bureau provides an advance notice package to all eligible tribal, state, and local governments. This package contains materials informing the eligible governments of the voluntary LUCA operation and provides instructions to update contact information and how to prepare to participate in LUCA. This stage occurs between January 2017 and March 2017.

Invitation

All eligible tribal, state, and local governments receive an invitation package. This package provides information on how to register for the operation, instructions on how to designate a liaison, and enables governments to select the type of materials. Additionally, the invitation package provides information regarding the responsibility for safeguarding and protecting Title 13 materials. The Census Bureau will follow up and send reminder packages to governments that do not respond. This stage occurs between July 2017 and September 2017.

Address Review

Governments that elect to participate receive materials based on their selection from the invitation package. Governments have a maximum of 120 days from the date of receipt of materials to complete and submit their address and spatial updates to the Census Bureau. The Census Bureau will conduct follow up with letters, postcards, and phone calls to encourage timely submission of address and spatial updates. This stage occurs between February 2018 and May 2018.

Feedback

The Census Bureau will provide a feedback package to governments that participate in LUCA. This package includes detailed information on the results of the address and spatial updates submitted during LUCA. This stage occurs between August 2019 and October 2019.

Closeout

The Census Bureau provides a closeout letter to governments that participated in LUCA with notification to destroy or return Title 13 materials. The Census Bureau will also conduct follow up with letters and phone calls to ensure that Title 13 materials are destroyed or returned. This stage occurs between October 2019 and June 2020.

The information on LUCA contacts, certification of agreement to maintain the confidentiality of the Census Bureau address information, physical and information technology security

capability, product media preference, shipment inventory, and certification of the destruction or return of materials containing confidential data is collected via the completion of electronic or printed forms.

Address Updates

Information collection for living quarters address additions, corrections, deletions, and address attribute updates, at the participating government's preference, can be submitted in the form of:

1. Digital data files output by the Geographic Update Partnership Software (GUPS), a desktop application supplied free-of-charge to LUCA participants to facilitate the review and update of Census Bureau address and map information;
2. Digital data files formatted to Census Bureau specifications; or
3. Handwritten annotations to Census Bureau-provided printed-paper address listings and address locations on Census Bureau-provided block maps (limited to governments with 6,000 or fewer addresses).

Feature Updates

Information collection for living quarter location coordinates (latitude/longitude), roads, and road attribute updates, at the participating government's preference, can be submitted in the form of:

1. Digital data shapefiles output by GUPS;
2. Digital updates to Census Bureau supplied shapefiles; or
3. Handwritten annotations on Census Bureau supplied paper maps.

Affected Public: Tribal, state, and local governments.

Frequency: LUCA occurs once a decade. Public Law 103–430 mandates that the Census Bureau offer LUCA prior to each decennial census.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Chapter 1, Subchapter 1, Section 16.

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.

Sheleen Dumas,

PRA Departmental Lead, Office of the Chief Information Officer.

[FR Doc. 2016–26778 Filed 11–4–16; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Proposed Information Collection; Comment Request; Voluntary Self-Disclosure of Antiboycott Violations

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before January 6, 2017.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Mark Crace, BIS ICB Liaison, (202) 482–8093, *Mark.Crace@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection of information supports enforcement of the Antiboycott provisions of the Export Administration Regulations (EAR) by providing a method for industry to voluntarily self-disclose Antiboycott violations.

II. Method of Collection

Submitted on paper or electronically.

III. Data

OMB Control Number: 0694–0132.

Form Number(s): N/A.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 15.

Estimated Time per Response: 10 to 600 hours.

Estimated Total Annual Burden Hours: 7,230.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

PRA Departmental Lead, Office of the Chief Information Officer.

[FR Doc. 2016–26776 Filed 11–4–16; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 84–27A12]

Export Trade Certificate of Review

ACTION: Notice of issuance of an amended Export Trade Certificate of Review to Northwest Fruit Exporters (''NFE''), Application No. (84–27A12).

SUMMARY: The U.S. Department of Commerce issued an amended Export Trade Certificate of Review to NFE on October 24, 2016.

FOR FURTHER INFORMATION CONTACT: Joseph E. Flynn, Director, Office of Trade and Economic Analysis (''OTEA''), International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or email at *etca@trade.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (2016). OTEA is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Secretary of Commerce to publish a summary of the certification in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the

determination on the ground that the determination is erroneous.

Description of Certified Content

NFE's Export Trade Certificate of Review has been amended to:

1. Add the following companies as new Members of the Certificate within the meaning of section 325.2(l) of the Regulations (15 CFR 325.2(l)), for Export Trade Activities and Methods of Operation relating to apples (A):

a. Legacy Fruit Packers LLC—Wapato, WA

2. Remove the following companies as Members of the Certificate:

a. Garrett Ranches Packing—Wilder, ID
b. Ron Lefore d/b/a LeFore Apple Farms—Milton-Freewater, OR

3. Change the product listing for the following existing Members:

a. From pears (P) to apples and pears (A,P) for Underwood Fruit & Warehouse Co.—Bingen, WA

4. Update the city listing for the following existing Members:

a. Remove Brewster, WA from Custom Apple Packers, Inc.
b. Change location of L&M Companies from Selah to Union Gap, WA

NFE's amendment of its Export Trade Certificate of Review results in the following membership list:

1. Allan Bros., Naches, WA
2. AltaFresh L.L.C. dba Chelan Fresh Marketing, Chelan, WA
3. Apple House Warehouse & Storage, Inc., Brewster, WA
4. Apple King, L.L.C., Yakima, WA
5. Auvil Fruit Co., Inc., Orondo, WA
6. Baker Produce, Inc., Kennewick, WA
7. Blue Bird, Inc., Peshastin, WA
8. Blue Star Growers, Inc., Cashmere, WA
9. Borton & Sons, Inc., Yakima, WA
10. Brewster Heights Packing & Orchards, LP, Brewster, WA
11. Broetje Orchards LLC, Prescott, WA
12. C.M. Holtzinger Fruit Co., Inc., Yakima, WA
13. Chelan Fruit Cooperative, Chelan, WA
14. Chiawana, Inc. dba Columbia Reach Pack, Yakima, WA
15. Columbia Fruit Packers, Inc., Wenatchee, WA
16. Columbia Fruit Packers/Airport Division, Wenatchee, WA
17. Columbia Marketing International Corp., Wenatchee, WA
18. Columbia Valley Fruit, L.L.C., Yakima, WA
19. Congdon Packing Co. L.L.C., Yakima, WA
20. Conrad & Adams Fruit L.L.C., Grandview, WA
21. Cowiche Growers, Inc., Cowiche, WA
22. CPC International Apple Company, Tieton, WA
23. Crane & Crane, Inc., Brewster, WA
24. Custom Apple Packers, Inc., Quincy, and Wenatchee, WA
25. Diamond Fruit Growers, Odell, OR
26. Domex Superfresh Growers LLC, Yakima, WA
27. Douglas Fruit Company, Inc., Pasco, WA
28. Dovex Export Company, Wenatchee, WA
29. Duckwall Fruit, Odell, OR
30. E. Brown & Sons, Inc., Milton-Freewater, OR
31. Evans Fruit Co., Inc., Yakima, WA
32. E.W. Brandt & Sons, Inc., Parker, WA
33. Frosty Packing Co., LLC, Yakima, WA
34. G&G Orchards, Inc., Yakima, WA
35. Gilbert Orchards, Inc., Yakima, WA
36. Gold Digger Apples, Inc., Oroville, WA
37. Hansen Fruit & Cold Storage Co., Inc., Yakima, WA
38. Henggeler Packing Co., Inc., Fruitland, ID
39. Highland Fruit Growers, Inc., Yakima, WA
40. HoneyBear Growers, Inc., Brewster, WA
41. Honey Bear Tree Fruit Co., LLC, Wenatchee, WA
42. Hood River Cherry Company, Hood River, OR
43. Ice Lakes LLC, East Wenatchee, WA
44. JackAss Mt. Ranch, Pasco, WA
45. Jenks Bros Cold Storage & Packing Royal City, WA
46. Kershaw Fruit & Cold Storage, Co., Yakima, WA
47. L&M Companies, Union Gap, WA
48. Larson Fruit Co., Selah, WA
49. Legacy Fruit Packers LLC, Wapato, WA
50. Manson Growers Cooperative, Manson, WA
51. Matson Fruit Company, Selah, WA
52. McDougall & Sons, Inc., Wenatchee, WA
53. Monson Fruit Co. Selah, WA
54. Morgan's of Washington dba Double Diamond Fruit, Quincy, WA
55. Naumes, Inc., Medford, OR
56. Northern Fruit Company, Inc., Wenatchee, WA
57. Olympic Fruit Co., Moxee, WA
58. Oneonta Trading Corp., Wenatchee, WA
59. Orchard View Farms, Inc., The Dalles, OR
60. Pacific Coast Cherry Packers, LLC, Yakima, WA
61. Peshastin Hi-Up Growers, Peshastin, WA
62. Phillippi Fruit Company, Inc., Wenatchee, WA
63. Piepel Premium Fruit Packing LLC, East Wenatchee, WA
64. Polehn Farm's Inc., The Dalles, OR
65. Price Cold Storage & Packing Co., Inc., Yakima, WA
66. Pride Packing Company, Wapato, WA
67. Quincy Fresh Fruit Co., Quincy, WA
68. Rainier Fruit Company, Selah, WA
69. Roche Fruit, Ltd., Yakima, WA
70. Sage Fruit Company, L.L.C., Yakima, WA
71. Smith & Nelson, Inc., Tonasket, WA
72. Stadelman Fruit, L.L.C., Milton-Freewater, OR, and Zillah, WA
73. Stemilt Growers, LLC, Wenatchee, WA
74. Strand Apples, Inc., Cowiche, WA
75. Symms Fruit Ranch, Inc., Caldwell, ID
76. The Dalles Fruit Company, LLC, Dallesport, WA
77. Underwood Fruit & Warehouse Co., Bingen, WA
78. Valicoff Fruit Co., Inc., Wapato, WA
79. Valley Fruit III L.L.C., Wapato, WA
80. Washington Cherry Growers, Peshastin, WA
81. Washington Fruit & Produce Co., Yakima, WA
82. Western Sweet Cherry Group, LLC, Yakima, WA
83. Western Traders LLC, E. Wenatchee, WA
84. Whitby Farms, Inc. dba: Farm Boy Fruit Snacks LLC, Mesa, WA
85. Yakima Fresh, Yakima, WA
86. Yakima Fruit & Cold Storage Co., Yakima, WA
87. Zirkle Fruit Company, Selah, WA

The effective date of the amendment is July 25, 2016, the date on which NFE's application to amend was deemed submitted.

Dated: October 26, 2016.

Joseph E. Flynn,

Director, Office of Trade and Economic Analysis, International Trade Administration.

[FR Doc. 2016–26833 Filed 11–4–16; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–835]

Stainless Steel Sheet and Strip in Coils From the Republic of Korea: Final Results of Expedited Sunset Review of the Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) finds that revocation of the countervailing duty (CVD) order on stainless steel sheet and strip in coils (sheet and strip) from the Republic of

Korea (Korea) would likely lead to the continuation or recurrence of a countervailable subsidy at the levels indicated in the Final Results of Review section of this notice.

DATES: Effective November 7, 2016.

FOR FURTHER INFORMATION CONTACT: John Conniff, Office III, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1009.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2016, the Department initiated this third sunset review of the CVD order [1] on sheet and strip from Korea pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] The Department received a notice of intent to participate from Allegheny Ludlum, LLC d/b/a ATI Flat Rolled Products (ATI) and Outokumpu Stainless USA LLC (Outokumpu) (together, domestic interested parties), within the deadline specified in 19 CFR 351.218(d)(1)(i). The domestic interested parties claimed interested party status under section 771(9)(C) of the Act as domestic producers of sheet and strip in the United States.

The Department received an adequate substantive response from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). However, the Department did not receive a substantive response from any government or respondent interested party to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited review of the CVD order.

Scope of the Order

The merchandise subject to the CVD order consists of stainless steel sheet and strip in coils from Korea. Stainless steel is alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.,* cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to the order is classified in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80.

Although the HTS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise subject to the order is dispositive.

Excluded from the scope of the order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.,* flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.,* cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTS, ''Additional U.S. Note'' 1(d).

In response to comments by interested parties, the Department determined that certain specialty stainless steel products are also excluded from the scope of the order. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of the order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of the order. This ductile stainless steel strip

[1] *See Amended Final Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea; and Notice of Countervailing Duty Orders: Stainless Steel Sheet and Strip in Coils from France, Italy, and the Republic of Korea,* 64 FR 42923 (August 6, 1999) (*Order*).

[2] *See Initiation of Five-Year (Sunset) Review,* 81 FR 43185 (July 1, 2016).

contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.'' [3]

Certain electrical resistance alloy steel is also excluded from the scope of the order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.'' [4]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of the order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.'' [5]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of the order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.,* carpet knives).[6] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6.'' [7]

Analysis of Comments Received

All issues raised in this review are addressed in the Issues and Decision Memorandum, which is dated concurrently with and adopted by this notice.[8] The issues discussed in the Issues and Decision Memorandum include the likelihood of continuation or recurrence of a countervailable subsidy and the net countervailable subsidy likely to prevail if the *Order* were revoked. Parties can find a complete discussion of all issues raised in this expedited sunset review and the corresponding recommendations in this public memorandum, which is on file electronically *via* the Enforcement and Compliance Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/index.html.* The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Final Results of Review

Pursuant to sections 752(b)(1) and (3) of the Act, we determine that revocation of the *Order* on sheet and strip from Korea would be likely to lead to continuation or recurrence of a net countervailable subsidy at the rates listed below: [9]

Manufacturers/producers/exporters	Net countervailable subsidy rate (percent)
INI/BNG (formerly Inchon and now known as Hyundai)	0.54
DMC	0.67
Taihan	4.64
All-Others	0.63

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/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.

The Department is issuing and publishing these final results and this notice in accordance with sections 751(c), 752(b), and 777(i)(1) of the Act and 19 CFR 351.218(e)(ii)(c)(2).

Dated: October 31, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–26850 Filed 11–4–16; 8:45 am]

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[3] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[4] ''Gilphy 36'' is a trademark of Imphy, S.A.

[5] ''Durphynox 17'' is a trademark of Imphy, S.A.

[6] This list of uses is illustrative and provided for descriptive purposes only.

[7] ''GIN4 Mo,'' ''GIN5,'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

[8] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, to Paul Piquado, Assistant Secretary for Enforcement and Compliance regarding: ''Issues and Decision Memorandum for the Final Results of Expedited Sunset Review of the Countervailing Duty Order on Stainless Steel Sheet and Strip in Coils from the Republic of Korea,'' dated concurrently with this notice.

[9] *Id.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–845, A–580–834, A–583–831]

Stainless Steel Sheet and Strip in Coils From Japan, the Republic of Korea, and Taiwan: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of these sunset reviews, the Department of Commerce (the Department) finds that revocation of the antidumping duty (AD) orders on stainless steel sheet and strip (SSSS) in coils from Japan, the Republic of Korea (Korea), and Taiwan would be likely to lead to continuation or recurrence of dumping at the levels indicated in the ''Final Results of Sunset Reviews'' section of this notice.

DATES: Effective November 7, 2016.

FOR FURTHER INFORMATION CONTACT: Terre Keaton Stefanova, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1280.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2016, the Department published the notice of initiation of the sunset reviews of the AD *Orders* [1] on SSSS in coils from Japan, the Republic of Korea (Korea), and Taiwan, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] On July 15, 2016, AK Steel Corporation, Allegheny Ludlum, LLC d/b/a ATI Flat Rolled Products, North American Stainless, and Outokumpu Stainless USA LLC (collectively, Petitioners or domestic interested parties), notified the Department of their intent to participate within the 15-day period specified in 19 CFR 351.218(d)(1)(i).[3] Each of the domestic parties claimed interested party status under section 771(9)(C) of the Act stating that they are each producers in the United States of a domestic like product.

On July 29, 2016, the Department received complete substantive responses to the *Notice of Initiation* from domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no substantive responses from respondent interested parties with respect to the orders on SSSS in coils from Japan, Korea, or Taiwan, nor was a hearing requested. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted expedited (120-day) sunset reviews of the AD *Orders* on SSSS in coils from Japan, Korea, and Taiwan.

Scope of the Orders

The merchandise covered by these AD orders is SSSS in coils. The merchandise subject to these orders is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7219.13.00.31, 7219.13.00.51, 7219.13.00.71, 7219.13.00.81, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. (Prior to 2001, U.S. imports under HTS statistical reporting numbers 7219.13.00.31, 7219.13.00.51, 7219.13.00.71, 7219.13.00.81 were entered under HTS statistical reporting numbers 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80.) Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise subject to these orders is dispositive.

The Issues and Decision Memorandum, which is hereby adopted by this notice, provides a full description of the scope of the *Orders*.[4]

Analysis of Comments Received

A complete discussion of all issues raised in these reviews is provided in the accompanying Issues and Decision Memorandum. The issues discussed in the Issues and Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the *Orders* were revoked. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed at *http://enforcement.trade.gov/frn/.* The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Final Results of Reviews

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, the Department determines that revocation of the AD *Orders* on SSSS in coils from Japan, Korea, and Taiwan would be likely to lead to continuation or recurrence of dumping up to the following weighted-average margin percentages:

Country	Weighted-average margin (percent)
Japan	57.89
Korea	58.79
Taiwan	21.10

[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils From Japan;* 64 FR 40565 (July 27, 1999); and *Notice of Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils From United Kingdom, Taiwan and South Korea;* 64 FR 40555 (July 27, 1999) (collectively, *Orders*).

[2] *See Initiation of Five-Year (''Sunset'') Review,* 81 FR 43185 (July 1, 2016) (*Notice of Initiation*).

[3] *See* Petitioners' July 15, 2016, submissions ''Five-Year (''Sunset'') Review of the Antidumping Duty Order on Stainless Steel Sheet and Strip in Coils from Japan—Petitioners' Notice of Intent to Participate;'' ''Five-Year (''Sunset'') Review of the Antidumping Duty Order on Stainless Steel Sheet and Strip in Coils from Korea—Petitioners' Notice of Intent to Participate;'' and ''Five-Year (''Sunset'') Review of the Antidumping Duty Order on Stainless Steel Sheet and Strip in Coils from Taiwan—Petitioners' Notice of Intent to Participate.''

[4] *See* the Department's memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Issues and Decision Memorandum for the Expedited Third Sunset Reviews of the Antidumping Duty Orders on Stainless Steel Sheet and Strip in Coils from Japan, Korea, and Taiwan,'' dated concurrently with this notice (Issues and Decision Memorandum).

Notification to Interested Parties of Administrative Protective Orders

This notice serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results of the reviews and this notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: November 1, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–26848 Filed 11–4–16; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–791–806]

Stainless Steel Plate in Coils From South Africa: Final Results of Expedited Sunset Review of the Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) finds that revocation of the countervailing duty (CVD) order on stainless steel plate in coils (SSPC) from South Africa would likely lead to the continuation or recurrence of a countervailable subsidy at the levels indicated in the Final Results of Review section of this notice.

DATES: Effective November 7, 2016.

FOR FURTHER INFORMATION CONTACT: John Conniff, Office III, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1009.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2016, the Department initiated this third sunset review of the CVD order [1] on SSPC from South Africa pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] The Department received a notice of intent to participate from Allegheny Ludlum, LLC d/b/a ATI Flat Rolled Products (ATI) and Outokumpu Stainless USA LLC (Outokumpu) (together, domestic interested parties), within the deadline specified in 19 CFR 351.218(d)(1)(i). The domestic interested parties claimed interested party status under section 771(9)(C) of the Act as domestic producers of SSPC in the United States.

The Department received an adequate substantive response from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). However, the Department did not receive a substantive response from any government or respondent interested party to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited review of the CVD order.

Scope of the Order

The product covered by these orders is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (*e.g.,* cold-rolled, polished, etc.) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of these orders are the following: (1) Plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars.

The merchandise subject to this review is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.06, 7219.12.00.21, 7219.12.00.26, 7219.12.00.51, 7219.12.00.56, 7219.12.00.66, 7219.12.00.71, 7219.12.00.81, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80.

Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the merchandise subject to these orders is dispositive.

Analysis of Comments Received

All issues raised in this review are addressed in the Issues and Decision Memorandum, which is dated concurrently with and adopted by this notice.[3] The issues discussed in the Issues and Decision Memorandum include the likelihood of continuation or recurrence of a countervailable subsidy and the net countervailable subsidy likely to prevail if the *Order* were revoked. Parties can find a complete discussion of all issues raised in this expedited sunset review and the corresponding recommendations in this public memorandum, which is on file electronically *via* the Enforcement and Compliance Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/index.html.* The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Final Results of Review

Pursuant to sections 752(b)(1) and (3) of the Act, we determine that revocation of the *Order* on stainless steel plate in coils from South Africa would be likely to lead to continuation or recurrence of a net countervailable subsidy at the rates listed below: [4]

[1] *See Notice of Amended Final Determinations: Stainless Steel Plate in Coils from Belgium and South Africa; and Notice of Countervailing Duty Orders: Stainless Steel Plate in Coils from Belgium, Italy, and South Africa,* 64 FR 25288 (May 11, 1999) (*Order*).

[2] *See Initiation of Five-Year (''Sunset'') Review,* 81 FR 43185 (July 1, 2016).

[3] See Memorandum from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, to Paul Piquado, Assistant Secretary for Enforcement and Compliance regarding: ''Issues and Decision Memorandum for the Final Results of Expedited Sunset Review of the Countervailing Duty Order on Stainless Steel Plate in Coils from South Africa,'' dated concurrently with and adopted by this Notice (Issues and Decision Memorandum).

[4] *Id.*

Manufacturers/producers/exporters	Net countervailable subsidy rate (percent)
Columbus Stainless Steel Company (the operating unit of the Columbus Joint Venture)	3.95
All-Others	3.95

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/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.

The Department is issuing and publishing these final results and this notice in accordance with sections 751(c), 752(b), and 777(i)(1) of the Act.

Dated: October 31, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–26851 Filed 11–4–16; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–928]

Uncovered Innerspring Units From the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review; 2015–2016

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on uncovered innerspring units (''innerspring units'') from the People's Republic of China (''PRC''). The period of review (''POR'') is February 1, 2015, through January 31, 2016. The Department preliminarily determines that the sole respondent, Enchant Privilege Sdn Bhd (''Enchant Privilege''), did not cooperate to the best of its ability and is, therefore, basing its margin on adverse facts available (''AFA''). Interested parties are invited to comment on these preliminary results.

FOR FURTHER INFORMATION CONTACT: Kenneth Hawkins, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6491.

SUPPLEMENTARY INFORMATION:

Background

On February 19, 2009, the Department published an antidumping duty order on innerspring units from the PRC (''the *Order*'').[1] On February 29, 2016, Leggett & Platt, Inc. (''Petitioner'') submitted a request for the Department to conduct an administrative review of the *Order* that examines Enchant Privilege's exports of subject merchandise made during the POR.[2] On April 7, 2016, the Department published in the **Federal Register** a notice of initiation of this administrative review of the *Order* concerning Enchant Privilege's POR exports of subject merchandise.[3] [4]

Scope of the Order

The merchandise subject to the order is uncovered innerspring units composed of a series of individual metal springs joined together in sizes corresponding to the sizes of adult mattresses (*e.g.,* twin, twin long, full, full long, queen, California king and king) and units used in smaller constructions, such as crib and youth mattresses. The product is currently classified under subheading 9404.29.9010 and has also been classified under subheadings 9404.10.0000, 9404.29.9005, 9404.29.9011, 7326.20.0070, 7320.20.5010, 7320.90.5010, or 7326.20.0071 of the Harmonized Tariff Schedule of the United States (''HTSUS''). The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope of the order is dispositive.[5]

Methodology

The Department is conducting this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (''the Act''). With respect to Enchant Privilege, we relied on facts available and, because Enchant Privilege did not act to the best of its ability to respond to the Department's requests for information, we drew an adverse inference in selecting from among the facts otherwise available.[6]

For a full description of the methodology underlying our conclusions, please see the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''ACCESS''). ACCESS is available to registered users at *http://access.trade.gov* and in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

The Department preliminarily determines that a dumping margin of 234.51 percent exists for Enchant Privilege for the period February 1, 2015, through January 31, 2016.

Public Comment

Pursuant to 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs not later than 30 days after the date of publication of this notice in the **Federal Register**. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[7] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[8] Case and rebuttal briefs should be filed using ACCESS.[9]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to

[1] *See Uncovered Innerspring Units from the People's Republic of China: Notice of Antidumping Duty Order,* 74 FR 7661 (February 19, 2009).

[2] *See* Request for Antidumping Administrative Review of the Antidumping Duty Order on Uncovered Innerspring Units from the People's Republic of China, dated February 29, 2016.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 81 FR 20324 (April 7, 2016) (''Initiation Notice'').

[4] Enchant Privilege is located in Malaysia, a market economy country. As a result, the Department is examining Enchant Privilege's PRC-origin exports of subject merchandise for this administrative review.

[5] For a full description of the scope of the order, see the Department Memorandum, ''Decision Memorandum for Preliminary Results of 2015–2016 Antidumping Duty Administrative Review: Uncovered Innerspring Units from the People's Republic of China,'' dated concurrently with and hereby adopted by this notice (Preliminary Decision Memorandum).

[6] *See* sections 776(a) and (b) of the Act.

[7] *See* 19 CFR 351.309(d)(1).

[8] *See* 19 CFR 351.309(c)(2) and (d)(2).

[9] *See* 19 CFR 351.303.

the Assistant Secretary for Enforcement and Compliance within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues parties intend to discuss. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230, at a date and time to be determined.[10] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Unless extended, the Department intends to issue the final results of this administrative review, which will include the results of our analysis of all issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.[11] The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. We will instruct CBP to assess duties at the *ad valorem* margin rate published above. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any assessment rate calculated in the final results of this review is above *de minimis.* The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable. The Department will assess duties only on entries of subject merchandise (*i.e.,* PRC-origin innerspring units).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For Enchant Privilege, the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis,* then zero cash deposit will be required) and the Department will collect cash deposits only on Enchant Privilege's PRC-origin merchandise; (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate published for the most recently completed period; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 234.51 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(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 double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213.

Dated: October 31, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Scope of the Order
4. Discussion of the Methodology
   a. Facts Otherwise Available
   i. Use of Facts Available
   ii. Use of Adverse Facts Available
5. Recommendation

[FR Doc. 2016–26849 Filed 11–4–16; 8:45 am]

BILLING CODE 3510–DS–P

[10] *See* 19 CFR 351.310(d).

[11] *See* 19 CFR 351.212(b)(1).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–602–807, A–351–842, A–570–022, C–570–023, A–560–828, C–560–829, A–471–807]

Certain Uncoated Paper From Australia, Brazil, the People's Republic of China, Indonesia, and Portugal: Initiation of Anti-Circumvention Inquiry

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union; Domtar Corporation; Finch Paper LLC; P.H. Glatfelter Company; and Packaging Corporation of America (collectively, the petitioners), the Department of Commerce (the Department) is initiating an anti-circumvention inquiry pursuant to section 781(c) of the Tariff Act of 1930, as amended (the Act), to determine under the minor alterations provision whether uncoated paper with a GE brightness of 83 +/− 1% (83 Bright paper) is ''altered in form or appearance in minor respects'' from in-scope merchandise such that it may be considered subject to the antidumping (AD) and countervailing duty (CVD) orders on certain uncoated paper.

DATES: Effective November 7, 2016.

FOR FURTHER INFORMATION CONTACT: Ross Belliveau, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4952.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 2016, the Department issued AD orders on certain uncoated paper from Australia, Brazil, the People's Republic of China (PRC), Indonesia, and Portugal and CVD orders on certain uncoated paper from the PRC and Indonesia.[1] On July 15, 2016, the petitioners alleged that Asia Pulp and Paper (APP), one of the major

[1] *See Certain Uncoated Paper From Australia, Brazil, Indonesia, the People's Republic of China, and Portugal: Amended Final Affirmative Antidumping Determinations for Brazil and Indonesia and Antidumping Duty Orders;* 81 FR 11174 (March 3, 2016) and *Certain Uncoated Paper from Indonesia and the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order (Indonesia) and Countervailing Duty Order (People's Republic of China);* 81 FR 11187, (March 3, 2016) (collectively, the *Orders*).

Indonesian producers of uncoated paper that is subject to the AD and CVD orders, is engaged in circumvention of the *Orders* by exporting uncoated paper with a GE brightness level of 83 to the United States.[2] The petitioners requested that the Department initiate an anti-circumvention proceeding, pursuant to both sections 781(c) and 781(d) of the Act and 19 CFR 351.225(i)–(j), to determine whether the merchandise at issue involves either a minor alteration to subject merchandise such that it should be subject to the *Orders,* and/or represents a later-developed product that should be considered subject to the *Orders*.[3] In the alternative, the petitioners requested that the Department initiate a scope inquiry pursuant to 19 CFR 351.225(k) to determine whether 83 Bright paper falls within the scope of the *Orders* because it is ''colored paper.'' [4] On August 1, 2016, in response to a request from the Department, the petitioners clarified that, consistent with 19 CFR 351.225(m), the intent of their request was that the Department conduct a single inquiry and issue a single ruling applicable to each of the seven outstanding orders on certain uncoated paper identified in their original request.[5]

Scope of the Orders

The merchandise subject to these orders includes uncoated paper in sheet form; weighing at least 40 grams per square meter but not more than 150 grams per square meter; that either is a white paper with a GE brightness level [6] of 85 or higher or is a colored paper; whether or not surface-decorated, printed (except as described below), embossed, perforated, or punched; irrespective of the smoothness of the surface; and irrespective of dimensions (Certain Uncoated Paper).

Certain Uncoated Paper includes (a) uncoated free sheet paper that meets this scope definition; (b) uncoated ground wood paper produced from bleached chemi-thermo-mechanical pulp (BCTMP) that meets this scope definition; and (c) any other uncoated paper that meets this scope definition regardless of the type of pulp used to produce the paper.

Specifically excluded from the scope of these orders are (1) paper printed with final content of printed text or graphics and (2) lined paper products, typically school supplies, composed of paper that incorporates straight horizontal and/or vertical lines that would make the paper unsuitable for copying or printing purposes. For purposes of this scope definition, paper shall be considered ''printed with final content'' where at least one side of the sheet has printed text and/or graphics that cover at least five percent of the surface area of the entire sheet.

Imports of the subject merchandise are provided for under Harmonized Tariff Schedule of the United States (HTSUS) categories 4802.56.1000, 4802.56.2000, 4802.56.3000, 4802.56.4000, 4802.56.6000, 4802.56.7020, 4802.56.7040, 4802.57.1000, 4802.57.2000, 4802.57.3000, and 4802.57.4000. Some imports of subject merchandise may also be classified under 4802.62.1000, 4802.62.2000, 4802.62.3000, 4802.62.5000, 4802.62.6020, 4802.62.6040, 4802.69.1000, 4802.69.2000, 4802.69.3000, 4811.90.8050 and 4811.90.9080. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

Initiation of Minor Alterations Anti-Circumvention Proceeding

Statutory Criteria for Initiation of Anti-Circumvention Proceeding Under Section 781(c) of the Act

Section 781(c)(1) of the Act provides that the Department may find circumvention of an AD and/or CVD order when products which are of the class or kind of merchandise subject to an AD and/or CVD order have been ''altered in form or appearance in minor respects . . . whether or not included in the same tariff classification.'' Section 781(c)(2) of the Act provides an exception that ''{p}aragraph 1 shall not apply with respect to altered merchandise if the administering authority determines that it would be unnecessary to consider the altered merchandise within the scope of the {AD or CVD} order{.}''

While the statute is silent as to what factors to consider in determining whether alterations are properly considered ''minor,'' the legislative history of this provision indicates that there are certain factors which should be considered before reaching a circumvention determination. In conducting a circumvention inquiry under section 781(c) of the Act, the Department has generally relied upon ''such criteria as the overall physical characteristics of the merchandise, the expectations of the ultimate users, the use of the merchandise, the channels of marketing and the cost of any modification relative to the total value of the imported products.'' [7] Concerning the allegation of minor alteration under section 781(c) of the Act and 19 CFR 351.225(i), the Department examines such factors as: (1) Overall physical characteristics; (2) expectations of ultimate users; (3) use of merchandise; (4) channels of marketing; and (5) cost of any modification relative to the value of the imported products.[8] Each case is highly dependent on the facts on the record, and must be analyzed in light of those specific facts. Thus, although not specified in the Act, the Department has also included additional factors in its analysis, such as commercial availability of the product at issue prior to the issuance of the order as well as the circumstances under which the products at issue entered the United States, the timing and quantity of said entries during the circumvention review period, and the input of consumers in the design phase of the product at issue.[9]

[2] *See* Letter from the petitioners entitled, ''Certain Uncoated Paper From Australia, Brazil, The People's Republic of China, Indonesia, and Portugal: Petitioners' Request For Minor Alterations And Later-Developed Merchandise Anti-Circumvention Inquiry Or, Alternatively, For A Scope Ruling,'' dated July 15, 2016 (Initiation Request). As indicated in the ''Scope of the Orders'' section, below, the GE brightness level specified in the scope of the *Orders* is 85 or higher.

[3] *Id.,* at 2.

[4] *Id.*

[5] *See* Letter from Petitioners entitled ''Certain Uncoated Paper From Australia, Brazil, The People's Republic Of China, Indonesia, and Portugal: Petitioners' Correspondence Pursuant To 19 CFR 351.225(m),'' dated August 1, 2016.

[6] One of the key measurements of any grade of paper is brightness. Generally speaking, the brighter the paper the better the contrast between the paper and the ink. Brightness is measured using a GE Reflectance Scale, which measures the reflection of light off a grade of paper. One is the lowest reflection, or what would be given to a totally black grade, and 100 is the brightest measured grade. ''Colored paper'' as used in this scope definition means a paper with a hue other than white that reflects one of the primary colors of magenta, yellow, and cyan (red, yellow, and blue) or a combination of such primary colors.

[7] *See* S. Rep. No.71, 100th Cong., 1st Sess. 100 (1987) (''In applying this provision, the Commerce Department should apply practical measurements regarding minor alterations, so that circumvention can be dealt with effectively, even where such alterations to an article technically transform it into a differently designated article.'').

[8] *See, e.g., Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order on Certain Cut-to-Length Steel Plate from the People's Republic of China,* 74 FR 33991, 33992 (July 14, 2009) (*CTL Plate from the PRC*) (unchanged in *Affirmative Final Determination of Circumvention of the Antidumping Duty Order on Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China;* 74 FR 40565 (August 12, 2009)).

[9] *See, e.g., CTL Plate from the PRC,* 74 FR at 33992–33993.

The Petitioners' Request for Initiation of an Anti-Circumvention Proceeding Under Section 781(c) of the Act

As discussed above, the petitioners identify the product subject to their request as 83 Bright paper. Specifically, the petitioners state that, after the issuance of the preliminary determinations, APP, one of the major Indonesian producers of uncoated paper, began exporting 8½ inch by 11 inch copier paper with a GE brightness level of 83, called ''Paperline Classic,'' from Indonesia to the West Coast of the United States. The petitioners obtained and tested a sample of this paper, demonstrating that it has a GE brightness level of 83.[10]

The petitioners also provided a bill of lading supporting their claim that imports of the 83 Bright paper were classified under HTSUS category 4802.56.4000—a category identified as subject to the *Orders.*[11] According to the petitioners, APP first imported 83 Bright paper in February 2016 and, to date, there have been numerous entries of this product totaling 2,300 metric tons.[12] The petitioners argue that APP is adding black dye to the pulp to create a paper product which does not meet the brightness level of uncoated paper covered by the scope of the *Orders,* but is otherwise subject merchandise. The petitioners assert that, as a result, 83 Bright paper represents a minor alteration of subject merchandise, which is thereby circumventing the *Orders* pursuant to section 781(c) of the Act. Although the petitioners noted that the Court of Appeals for the Federal Circuit has held that minor alteration inquiries are inappropriate when the allegedly altered product is expressly excluded from an order, they claim that such is not the case here, where 83 Bright paper is not expressly excluded from the order.[13]

In the Initiation Request, the petitioners presented the following evidence with respect to each of the aforementioned criteria:

A. Overall Physical Characteristics

The petitioners state that 83 Bright paper is nearly identical to other uncoated paper in the market—it has the same dimensions, the same basis weight, and is advertised for the same printing and copying purposes.[14] The petitioners assert that the only difference between 83 Bright paper and paper covered by the scope of the *Orders* is the paper's GE brightness level.[15] In support of their allegation, the petitioners provide a declaration from a member of the U.S. industry.[16]

B. Expectations of the Ultimate Users

The petitioners assert that the expectations of the ultimate users of 83 Bright paper and other uncoated paper covered by the scope of the *Orders* are exactly the same. Specifically, the petitioners state that 83 Bright paper is advertised for use in the same printing and copying applications as other uncoated paper covered by the scope of the *Orders.*[17] In support of their allegation, the petitioners provide a declaration from a member of the U.S. industry.[18]

C. Use of Merchandise

The petitioners assert that 83 Bright paper is used in printing and copying applications, similar to other uncoated paper covered by the *Orders.*[19] The petitioners also claim that the brightness of 83 Bright paper has no apparent impact on its ultimate use.[20] In support of their allegation, the petitioners provide a declaration from a member of the U.S. industry.[21]

D. Channels of Marketing

The petitioners assert that the marketing channels for 83 Bright paper and other uncoated paper covered by the *Orders* are the same.[22] The petitioners provided documentation demonstrating that 83 Bright paper is offered to the same customers and in the same manner.[23] According to the petitioners, this demonstrates that GE brightness level does not affect the marketing channel in which the paper is sold and that for end-users these products are interchangeable.

E. Cost of Modification Relative to Total Value

The petitioners assert that the cost of the minor alteration necessary to shift the GE brightness level of 83 Bright paper is minimal.[24] Moreover, the petitioners state that the increased costs are insignificant both when compared to either the total value of the imported product or APP's combined AD/CVD cash deposit rate.[25] In support of their allegation, the petitioners provide a declaration from a member of the U.S. industry.[26]

APP responded to the petitioners' allegations, noting that merchandise with a brightness level comparable to 83 Bright paper was produced and sold in commercial volumes at the time of the filing of the petitions and, thus, it cannot be considered later-developed merchandise.[27] In addition, APP stated the following regarding each criteria under section 781(c) of the Act:

A. Overall Physical Characteristics

APP states that there are numerous and significant physical differences between 83 Bright paper and other uncoated paper covered by the *Orders* in addition to GE brightness, including whiteness, bleaching chemicals, shade, and opacity.[28] Further, APP explains that optical brightening agents (OBAs) are often added during production to increase the GE brightness of paper. APP considers it significant that its 83 Bright paper is produced without adding OBAs and, thus, is ''OBA-free.''[29] [30]

B. Expectations of the Ultimate Users

APP disagrees that the expectations of the ultimate users of 83 Bright paper are the same as users of other uncoated paper covered by the *Orders.* According to APP, users of 83 Bright paper expect to benefit from reduced eyestrain, cost savings, and appreciate the generally warmer tones of this paper.[31] Further, APP notes that certain purchasers of paper covered by the *Orders* require photocopy paper with a minimum GE brightness of 92 and, thus, 83 Bright paper would not meet the requirements of such purchasers.[32]

C. Use of the Merchandise

APP states that 83 Bright paper is best for black-and-white copier applications

[10] *See* Initiation Request at 3.

[11] *Id.,* at 5.

[12] *Id.*

[13] *See* Initiation Request at 12, citing to *Deacero S.A. de C.V.* v. *United States,* 817 F.3d 1332, 1338 (Fed. Cir. 2016) (*Deacero*).

[14] *See* Initiation Request at 14 and Exhibit 2.

[15] *Id.,* at 15.

[16] *Id.,* at Exhibit 2.

[17] *Id.,* at 15 and Exhibit 2.

[18] *Id.,* at Exhibit 2.

[19] *Id.,* at 3.

[20] *Id.,* at 15.

[21] *Id.,* at Exhibit 2.

[22] *See* Initiation Request at 15.

[23] *Id.,* at 15–16 and Exhibits 10 and 11.

[24] *Id.,* at Exhibit 1.

[25] *Id.,* at 17 and Exhibit 2.

[26] *Id.,* at Exhibit 1.

[27] *See* Letter from APP entitled, ''Certain Uncoated Paper From Australia, Brazil, The People's Republic of China, Indonesia, and Portugal—Response to Request for Inquiry'' dated August 19, 2016 (APP Response), at 10 and Exhibit 3.

[28] *See* APP Response at 24.

[29] *Id.,* at Exhibit 7.

[30] APP noted that the petitioners incorrectly described the production process for 83 Bright paper. Specifically, APP stated that black dye is not added during the production process and, as a result, 83 Bright paper cannot be considered colored paper. *See* APP Response at 5 Exhibit 2.

[31] *See* APP Response at 26.

[32] *Id.,* at 24–25.

and not suitable for ink- or laser-jet printing.[33]

D. Channels of Marketing

APP claims that 83 Bright paper is marketed differently from other uncoated paper covered by the *Orders* because it is advertised as a lower brightness product produced to reduce eyestrain, manufactured for 2-sided copying, and is OBA Free.[34]

E. Cost of Modification Relative to Total Value

APP states that 83 Bright paper is not produced with additional OBAs and contains fewer bleaching chemicals. As a result, APP notes that it is less expensive to produce than other uncoated paper cover by the *Orders.*[35]

Analysis

After analyzing the information summarized above, we determine that the petitioners have satisfied the criteria to warrant an initiation of a formal anti-circumvention inquiry, pursuant to section 781(c) of the Act and 19 CFR 351.225(i).

As described above, the petitioners included declarations from members of the U.S. industry addressing the five factors the Department typically examines as part of a minor alterations inquiry under section 781(c) of the Act and 19 CFR 351.225(i). These declarations attest that: (1) With the exception of brightness, the overall physical characteristics of 83 Bright paper and other uncoated paper cover by the *Orders* are the same; (2) the expectations of ultimate users of 83 Bright paper and other uncoated paper cover by the *Orders* are the same; (3) the uses of 83 Bright paper and other uncoated paper cover by the *Orders* are the same; (4) the channels of marketing 83 Bright paper and other uncoated paper cover by the *Orders* are the same; and (5) the relative cost to reduce the brightness of 83 Bright paper to a GE brightness level below 85 is minimal.[36] We examined the declarations and found that the persons making them are in a position to have knowledge about the facts described in the declarations with respect to each of the aforementioned factors.

However, we note that APP provided information demonstrating the relative cost of producing 83 Bright paper and the process by which it is produced which differs from that provided by the petitioners. Specifically, by APP's own admission, 83 Bright paper is less expensive to produce because it does not contain the OBAs needed to raise the paper's brightness level to 85 or above and has fewer bleaching chemical than other uncoated paper covered by the *Orders.* Thus, there is an evidentiary basis to conclude that APP has altered its production process in order to produce a low-brightness paper.[37]

As noted above, we are initiating a minor alterations anti-circumvention inquiry pursuant to section 781(c) of the Act regarding 83 Bright paper. We do not find it appropriate to initiate a later-developed merchandise circumvention inquiry pursuant to section 781(d) of the Act because APP provided information demonstrating that merchandise with a brightness level comparable to 83 Bright paper was produced and sold in commercial volumes at the time of the filing of the petitions and, thus, 83 Bright paper cannot be considered later-developed merchandise.[38] Finally, we do not find it appropriate to initiate a scope inquiry pursuant to 19 CFR 351.225(k) because APP provided information demonstrating that 83 Bright paper is not colored paper.[39]

Merchandise Subject to the Minor Alterations Anti-Circumvention Proceeding

This minor alterations anti-circumvention inquiry covers uncoated paper with a GE brightness level of 83 +/− 1. Although only APP Indonesia is discussed in their request, as discussed above, the petitioners clarified that, consistent with 19 CFR 351.225(m), the intent of their request was that the Department conduct a single inquiry and issue a single ruling applicable to each of the *Orders.* In accordance with 19 CFR 351.225(m), if the Secretary considers it appropriate, the Secretary may conduct a single inquiry and issue a single scope ruling that applies to all such orders. Therefore, we will examine whether it is appropriate to apply the results of this inquiry to each of the seven *Orders.*

The Department will not order the suspension of liquidation of entries of any additional merchandise at this time. However, in accordance with 19 CFR 351.225(l)(2), if the Department issues a preliminary affirmative determination, we will then instruct U.S. Customs and Border Protection to suspend liquidation and require a cash deposit of estimated duties on the merchandise.

Following consultation with interested parties, the Department will establish a schedule for questionnaires and comments on the issues related to each of the *Orders.* The Department intends to issue its final determinations within 300 days of the date of publication of this initiation.

This notice is published in accordance with sections 781(c) of the Act and 19 CFR 351.225(i) and (j).

Dated: October 31, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–26847 Filed 11–4–16; 8:45 am]

BILLING CODE 3510–DS–P

[33] *Id.,* at 27–28.

[34] *Id.,* at 29.

[35] *Id.,* at 30.

[36] *See* Initiation Request at Exhibits 1 and 2.

[37] *Id.*

[38] *See* APP Response at 10 and Exhibit 3.

[39] *See* APP Response at 5 and Exhibit 2.

DEPARTMENT OF COMMERCE

Minority Business Development Agency

[Docket No.: 161012956–6956–01]

Notice and Request for Comments: Minority Business Development Agency (MBDA) Tribal Consultations

AGENCY: Minority Business Development Agency, Department of Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) plans to conduct five tribal consultation meetings with federally recognized tribes, American Indian and Alaska Native business/trade/economic organizations, and American Indian and Alaska Native-owned firms, between November 2016 and February 2017. The purpose of these tribal consultations is to provide a venue for tribal leaders share insights, make recommendations, and discuss concerns regarding MBDA's business development and entrepreneurial services in Indian Country. MBDA is also accepting written comments related to the business development issues stated in this notice.

DATES: Tribal consultations will be conducted in different locations between November 2016 and February 2017. The specific dates, locations and times will be announced on the MBDA Web site at *http://www.mbda.gov/tribalconsult* . Written comments in response to the questions posed in this notice must be submitted no later than January 30, 2017.

ADDRESSES: You may submit comments, identified by MBDA–2016–0001, by the following methods: Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/docket?D=MBDA-*

2016-001, click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments; Mail: Submit written comments to Bridget Gonzales, Chief, Office of Legislative, Education and Intergovernmental Affairs, Minority Business Development Agency, 1401 Constitution Avenue NW., Room 5067, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Melvin Tabilas, Legislative and Intergovernmental Affairs Specialist, Office of Legislative, Education and Intergovernmental Affairs, Minority Business Development Agency, at (202) 482–5598; or by email at *mtabilas@mbda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Minority Business Development Agency's (MBDA) Office of Legislative and Intergovernmental Affairs (OLEIA) serves as the focal point for consultation with Tribal governments and Tribal organizations on policy, regulatory and legislative issues that will have a direct impact on American Indian and Alaska Native (AIAN) communities. The tribal consultations will be conducted in conjunction with the MBDA's Office of Business Development (OBD) which designs and manages the business development services available to Native American entrepreneurs and tribally-owned businesses. Outreach and business development support specific to the AIAN populations is one part of the overall efforts of MBDA to ensure all programs and services of the Agency are available to members of the tribal communities.

MBDA is the only Federal agency created specifically to foster the establishment and growth of minority business enterprises (MBEs). MBDA actively promotes the strategic growth and expansion of MBEs by offering management and technical assistance through a nationwide network of business centers. All MBDA Business Centers serve businesses owned or controlled by persons or groups of persons from the following groups: American Indians and Native Americans (including Alaska Natives, Alaska Native Corporations, Tribal entities, Tribal universities and Tribal governments), African Americans, Asian Indian Americans, Asian and Pacific Islander Americans, Hasidic Jewish Americans, and Hispanic Americans. MBDA target clients are businesses with $1.0 million or more in revenues.

The MBDA Business Centers provide services that include, but are not limited to, initial consultations and assessments, business technical assistance, and access to federal and non-federal procurement and financing opportunities. Specific performance requirements and metrics are used by MBDA to evaluate each business center and are a key component of the MBDA's business development programs.

During fiscal year 2016, MBDA provided dedicated outreach to the AIAN population through the operation of six MBDA Business Centers—AIAN in the following locations: Fresno, California; Santa Fe, New Mexico; Tulsa, Oklahoma; Bismarck, North Dakota; Anchorage, Alaska; and Bridgeport, Connecticut. For more details about the current goals and objectives of the MBDA Business Centers—AIAN, please see the Federal Funding Opportunity notice that was issued in 2012 at *http://www.mbda.gov/tribalconsult.*

Funding for the current MBDA Business Center—AIAN program will expire in August 2017. MBDA expects to renew its investment in Indian Country and has designed the tribal consultations to allow tribal governments and organizations an opportunity to provide information on how to better provide business development services and programs. The locations and approximate dates, and times of the meetings are provided below in Supplementary Information. The specific dates and times will be posted on MBDA's Web site at *http://www.mbda.gov/tribalconsult.* The meetings are open to members of federally recognized tribes. In consideration of tribal leaders who are not able to attend a tribal consultation meeting, MBDA is also accepting written comments based on the questions listed below.

II. Tribal Consultation Meetings

Tribal consultation sessions are tentatively scheduled in association with the following events:

Date	Location	Event
1. Nov 1–3, 2016	Tulsa, Oklahoma	Native American Contractors Association—Annual B2B Conference & Marketplace.
2. Nov 14–17, 2016	Santa Fe, New Mexico	National Center for American Indian Enterprise Development—Reservation Economic Summit (RES) New Mexico.
3. November 14–17, 2016	Minneapolis, MN	Long Term Services and Supports in Indian Country Conference.

Details about each Tribal consultation meeting will be posted on the MBDA Web site at: *http://www.mbda.gov/tribalconsult.* The MBDA Tribal consultation meetings are being hosted by the U.S. Federal Government. They are open and public meetings. They will be tape-recorded and transcribed so that we can retain valuable input and feedback. Registration for the non-governmental organization conferences is not mandatory to participate in in the MBDA Tribal consultations.

III. Questions for Public Comment

Comments may be provided in response to any or all of the following questions. Please identify the specific AIAN community represented by the comments (*e.g.,* Cherokee Nation, Alaska Native village, Native American businesses off reservation, tribally-owned businesses):

1. Describe any self-governance entrepreneurial or business development programs that have resulted in positive impacts to your community's economic development? What were the impacts and how did they come about?

2. What challenges exist to business development and job creation in AIAN communities? What ideas or solutions do you think would address these challenges?

3. What are your goals and priorities for advancing AIAN entrepreneurship and business development?

4. What are some best practices that you've seen implemented that positively address the business development challenges experienced by your community from either a self-governing perspective, and/or from Federal, state, or local programs?

5. Have you (or businesses from your Tribe/Tribal organization) been a client of a MBDA Business Center—AIAN?

a. If so, please describe the services and activities that have been most beneficial to growing their business and/or creating jobs:

1. Access to private sector contracts;

2. Access to Federal/State or Municipal contracts;

3. Access to capital;

4. Exporting;

5. Joint partnerships/teaming arrangements;

6. Other.

b. If you or your business have not been a client of a MBDA Business Center, please state reasons why, if any?

6. Do the goals and objectives of the MBDA Business Centers—AIAN align with your Tribe's business and economic development goals? If so, please elaborate. If not, please provide recommendations for improvements, enhancements or alternatives.

Comments must include the following: Name and title of commenter, name of tribe, tribal organization or business, AIAN location (if applicable), city, and state.

Dated: November 2, 2016.

Josephine Arnold,

Chief Counsel, Minority Business Development Agency.

[FR Doc. 2016–26832 Filed 11–4–16; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0649–XF021

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting via webinar.

SUMMARY: The Gulf of Mexico Fishery Management Council will hold a meeting of its Standing and Reef Fish Scientific and Statistical Committees (SSC) via webinar.

DATES: The meeting will convene on Tuesday, November 22, 2016, from 10 a.m. to 11 a.m. EST.

ADDRESSES: The meeting will be held via webinar; you may attend by registering at: *https://attendee.gotowebinar.com/register/3715638296142754308.* See below for instructions on how to register.

Council address: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Steven Atran, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; *steven.atran@gulfcouncil.org,* telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Tuesday, November 22, 2016; 10 a.m.–11 a.m.

I. Introductions, Voice ID, and Adoption of Agenda
II. SEDAR 48 (Black Grouper) Benchmark Assessment Preparation
  a. Review and Approval of Terms of Reference
  b. Review of Project Schedule
  c. Selection of Appointees to Data, Assessment, and Review Workshops
III. Other Business
Meeting Adjourns

Both participants and observers must register in advance for the webinar. You may register for the SSC: Standing and Reef Fish webinar by going to the Council's Web site (*http://www.gulfcoucil.org*) and clicking on ''Committee & Panel meetings, or by entering the following link: *https://attendee.gotowebinar.com/register/3715638296142754308*

After registering, you will receive a confirmation email containing information about joining the webinar.

The Agenda is subject to change, and the latest version along with other meeting materials will be posted on the Council's file server. To access the file server, the URL is *https://public.gulfcouncil.org:5001/webman/index.cgi,* or go to the Council's Web site and click on the FTP link in the lower left of the Council Web site (*http://www.gulfcouncil.org*). The username and password are both ''gulfguest''. Click on the ''Library Folder'', then scroll down to ''SSC meeting-2016–11 webinar''.

The meeting will be webcast over the internet. See above for instructions on registering for the webinar.

Although other non-emergency issues not on the agenda may come before the Scientific and Statistical Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Scientific and Statistical Committee will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Gulf Council Office (see **ADDRESSES**), at least 5 working days prior to the meeting.

Dated: November 2, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–26855 Filed 11–4–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF023

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public hearings and webinar.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold eight public hearings and one webinar to solicit public comments on Coastal Migratory Pelagics (CMP) Amendment 29—Allocation Sharing and Accountability Measures for the Gulf of Mexico Migratory Group of King Mackerel.

DATES: The public hearings will be held November 30–December 8, 2016. The meetings will begin at 6 p.m. and will conclude no later than 9 p.m. For specific dates and times, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The public documents can be obtained by contacting the Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607; (813) 348–1630 or on their Web site at *www.gulfcouncil.org.*

Meeting addresses: The public hearings will be held in Tampa, Key West and Panama City, FL; Port Aransas and Galveston, TX; Pascagoula, MS; Mobile, AL; Houma, LA; and one webinar. For specific locations, see **SUPPLEMENTARY INFORMATION**.

Public comments: Comments may be submitted online through the Council's public portal by visiting *www.gulfcouncil.org* and clicking on ''CONTACT US''.

FOR FURTHER INFORMATION CONTACT: Douglas Gregory, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The agenda for the following eight hearings and one webinar are as follows: Council

staff will brief the public on CMP Amendment 29—Allocation Sharing and Accountability Measures for the Gulf of Mexico Migratory Group of King Mackerel. Staff will then open the meeting for questions and public comments. The schedule is as follows:

Locations, Schedules, and Agendas

Wednesday, November 30, 2016; Hilton Tampa Westshore Airport hotel, 2225 N. Lois Avenue, Tampa, FL 33607; telephone: (813) 877–6688;

Thursday, December 1, 2016; Harvey Government Center, 1200 N. Truman Avenue, Key West, FL 33040; telephone: (305) 295–4385;

Monday, December 5, 2016; Hampton Inn & Suites, 2208 Highway 361, Port Aransas, TX 78373; telephone: (361) 749–8888; Hilton Garden Inn, 2703 Denny Avenue, Pascagoula, MS 39563; telephone: (228) 762–7182;

Tuesday, December 6, 2016; Hilton Galveston Island, 5400 Seawall Boulevard, Galveston, TX 77551; telephone: (409) 744–5000; Renaissance Mobile Riverview Plaza Hotel, 64 South Water Street, Mobile, AL 36602; telephone: (251) 438–4000;

Wednesday, December 7, 2016; Marriott Courtyard, 142 Library Drive, Houma, LA 70360; telephone: (985) 223–8996; Hilton Garden Inn, 1101 North U.S. Highway 231, Panama City, FL 32405; telephone: (850) 392–1093;

Thursday, December 8, 2016, Webinar—6 p.m. EST at: *https://attendee.gotowebinar.com/register/1169421153446562050*

After registering, you will receive a confirmation email containing information about joining the webinar.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira (see **ADDRESSES**), at least 5 working days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 2, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–26857 Filed 11–4–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF003

Fishing Capacity Reduction Program for the Southeast Alaska Purse Seine Salmon Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of eligible voters; referendum voting period; public meetings.

SUMMARY: NMFS issues this notice to inform persons of their eligibility to vote and referendum voting period in the fishing capacity reduction program referendum for a second loan in the Southeast Alaska Purse Seine Salmon Fishery. NMFS will hold a series of public meetings with Southeast Alaska purse seine salmon permit holders and interested individuals.

DATES: Comments must be submitted on or before 5 p.m. EST December 7, 2016.

The meetings will be held between November 14 and November 17, 2016. For specific times, please see the Public Meetings heading in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: The meetings will be held in Sitka, AK, Ketchikan, AK, Petersburg, AK, and Seattle, WA. For specific locations, please see Public Meetings heading in the **SUPPLEMENTARY INFORMATION** section. Send comments about this notice to Paul Marx, Chief, Financial Services Division, NMFS, Attn: SE Alaska Purse Seine Salmon Buyback, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Michael A. Sturtevant at (301) 427–8799, fax (301) 713–1306, or *michael.a.sturtevant@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Southeast Alaska purse seine salmon fishery is a commercial fishery in Alaska state waters and adjacent Federal waters. It encompasses the commercial taking of salmon with purse seine gear, and participation is limited to fishermen designated by the Alaska Commercial Fisheries Entry Commission (CFEC). Congress authorized a $23.5 million loan to finance a fishing capacity reduction program in the Southeast Alaska purse seine salmon fishery. NMFS published proposed program regulations on May 23, 2011 (76 FR 29707), and final program regulations on October 6, 2011 (76 FR 61986), to implement the reduction program.

In 2012, NMFS conducted a referendum to determine the remaining fishermen's willingness to repay a $13.1 million fishing capacity reduction loan to remove 64 permits. After a majority of permit holders approved the loan, NMFS disbursed payments to the successful bidders and began collecting fees to repay the loan. Since only $13.1 million was expended from the total loan amount, $10.4 remains available. This second referendum, if approved, will result in a second loan of $5.8 million and permanently retire an additional 22 permits from the fishery.

In August 2016, the Southeast Revitalization Association submitted a second capacity reduction plan to NMFS and NMFS approved the second plan in October 2016. The final regulations require NMFS to publish this notice before conducting a referendum to determine the industry's willingness to repay a second fishing capacity reduction loan to purchase the permits identified in the second reduction plan.

As of October 21, 2016, there are 315 permits in the fishery designated as S01A by CFEC. These permanent permit holders are eligible to vote in this second referendum. Comments may address: (1) Persons who appear on the below list but should not; (2) persons who do not appear on the list but should; (3) persons whose names and/or business mailing addresses are incorrect; and (4) any other pertinent matter. NMFS will update the list, as necessary, immediately before mailing referendum ballots. Mailed ballots will be accompanied by NMFS' detailed voting guidance.

II. Referendum Voting Period

The referendum voting period will start December 13, 2016 and end on January 13, 2017. Any votes not received by NMFS by 5 p.m. on January 13, 2017, will not be counted.

III. Public Meetings

NMFS will hold a series of four public informational meetings with Southeast Alaska purse seine salmon permit holders and interested individuals:

- Monday, November 14, 2016, from 2 p.m. to 4 p.m. in Sitka, AK, at the Westmark Sitka Hotel (330 Seward Street).
- Tuesday, November 15, 2016, from 3 p.m. to 5 p.m. in Ketchikan, AK, at the Best Western Plus Landing Hotel (3434 Tongass Avenue).
- Wednesday, November 16, 2016, from 12 p.m. to 2 p.m. in Petersburg,

AK, at the Petersburg Public Library Community Room (14 South Second Street).

- Thursday, November 17, 2016, from 10 a.m. to 12 p.m. in Seattle, WA at CenturyLink Field Event Center Media Room 1D47 (800 Occidental Ave South).

Comments and questions regarding any aspect of the fishing capacity reduction program are welcome.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Michael A. Sturtevant (see **ADDRESSES**), at least 5 working days prior to the meeting date.

The following list of eligible voters was provided by CFEC on October 21, 2016:

BILLING CODE 3510–22–C

	Permit holder name	Serial No.	Address	City	State	Zip
1	WYMAN PHILLIP R	55164	BOX 2507	SITKA	AK	99835
2	FELLOWS ROBERT E	55228	266 E BAYVIEW AVE	HOMER	AK	99603
3	ETHELBAH HARLEY E	55230	23929 22ND DR SE	BOTHELL	WA	98021
4	SORENSEN DAVID E	55233	510 OLMSTEAD LN SW	OLYMPIA	WA	98512
5	EIDE MITCHELL L	55243	BOX 981	PETERSBURG	AK	99833
6	MAGILL FREDERICK S	55299	BOX 444	PETERSBURG	AK	99833
7	GILBERTSEN MICHELLE D	55317	19128 TRILOGY PARKWAY E	BONNEY LAKE	WA	98391
8	ROSTAD PAUL D	55338	BOX 183	KAKE	AK	99830
9	KITTAMS ANDREW W	55341	BOX 1544	PETERSBURG	AK	99833
10	MARTENS J.CHERIE	55367	BOX 623	PETERSBURG	AK	99833
11	PURATICH JOSEPH M	55385	BOX 272	GIG HARBOR	WA	98335
12	ONEIL PATRICK	55388	349 RAVEN HILL RD	LOPEZ ISLAND	WA	98261
13	CURRY CLYDE	55389	BOX 572	PETERSBURG	AK	99833
14	FILE SCOTT	55392	4515 TRAFALGAR	JUNEAU	AK	99801
15	PETERSON STEVE E	55395	BOX 550	VASHON	WA	98070
16	ERICKSON JEFF	55396	BOX 53	PETERSBURG	AK	99833
17	JOHNSON MOSES P	55404	1413 HALIBUT POINT RD	SITKA	AK	99835
18	ANDERSON MARK T	55435	49 NORTH STAR LN	FRIDAY HARBOR	WA	98250
19	BABICH NICK A 2	55452	13310 PURDY DR NW	GIG HARBOR	WA	98332
20	GENTHER CURT	55457	3214 LILY LAKE RD	BOW	WA	98232
21	PECKHAM JOHN P	55481	BOX 8394	KETCHIKAN	AK	99901
22	THOMASSEN TROY R	55489	BOX 152	PETERSBURG	AK	99833
23	CORNWELL CHRIS	55501	4220 CRYSTAL SPRINGS DR	BAINBRIDGE IS	WA	98110
24	MURPHY KEVIN C	55505	629 HAVEN POINT	NEW BRAUNFELS	TX	78132
25	NILSEN YANCEY L	55523	BOX 1822	PETERSBURG	AK	99833
26	THORSTENSON ROBERT M 2	55582	410 CALHOUN AVE	JUNEAU	AK	99801
27	ROONEY JASON M	55588	BOX 307	WRANGELL	AK	99929
28	BEAUDIN DAVID L	55603	430 S BLACK AVE	BOZEMAN	MT	59715
29	JENSEN JEREMY C	55611	2900 JACKSON RD	JUNEAU	AK	99801
30	CISNEY JOE A	55657	994 REHBERG RD	GREENBANK	WA	98253
31	BENKMAN WALTER	55659	10533 14AVE NW	SEATTLE	WA	98177
32	DEMMERT MICHAEL	55660	BOX 391	CRAIG	AK	99921
33	YOUNG LAWRENCE	55663	224 MAKA HOU LP	WAILUKU	HI	96793
34	KAPP DARRELL G	55673	338 BAYSIDE RD	BELLINGHAM	WA	98225
35	WEYNANDS MICHAEL	55723	13090 BRIDGEVIEW WAY	MOUNT VERNON	WA	98273
36	OLNEY-MILLER NICK	55730	3006 BARKER ST	SITKA	AK	99835
37	MCFADYEN JEFFREY J	55737	BOX 592	PETERSBURG	AK	99833
38	HANSEN KURT N	55801	5266 35TH AVE NE	SEATTLE	WA	98105
39	KYLE BEN A	55813	2817 MARTIN ST	BELLINGHAM	WA	98226
40	HAYNES GARY L	55828	625 SUNSET DR	KETCHIKAN	AK	99901
41	EDENSHAW SIDNEY C	55830	BOX 352	HYDABURG	AK	99922
42	HENRY RONALD R	55833	2417 TONGASS AVE #111-141	KETCHIKAN	AK	99901
43	EVENS ERIC	55898	BOX 1412	PETERSBURG	AK	99833
44	JENSEN JAMES C	55903	BOX 402	PETERSBURG	AK	99833
45	SWANSON JOHN R	55928	BOX 1546	PETERSBURG	AK	99833
46	PORTER RONALD F	55937	BOX 957	WARD COVE	AK	99928
47	HOFSTAD ALBERT J	55939	BOX 1397	PETERSBURG	AK	99833
48	ROOD RICHARD C	55955	BOX 3466	LYNNWOOD	WA	98046
49	WRIGHT FRANK 2	55964	BOX 497	HOONAH	AK	99829
50	THOMASSEN STEVEN H 2	55967	BOX 424	WRANGELL	AK	99929
51	MEINERS THOMAS M	55974	805 GOLDBELT AVE	JUNEAU	AK	99801
52	KINNEY MATTHEW Q	55989	103 KRAMER AVE	SITKA	AK	99835
53	BRISCOE ROBERT J 2	56014	1043 PEACE PORTAL DR	BLAINE	WA	98230
54	BERITICH GREGORY N	56054	1810 23RD AVE CT SE	PUYALLUP	WA	98374
55	BLANKENSHIP PAUL V	56055	500 LINCOLN ST #B6	SITKA	AK	99835
56	CARLE MATTHEW J 1	56070	BOX 32	HYDABURG	AK	99922
57	PIECUCH CHARLES R	56077	4737 4TH AVE NE	SEATTLE	WA	98105
58	GAMBLE GERALD M	56099	3602 ENTRADA DR NE	OLYMPIA	WA	98506
59	JENSEN ERIC D	56143	17403 COLONY RD	BOW	WA	98232
60	LINDBLOM RICHARD L	56144	2971 TILLICUM BEACH DR	CAMANO ISLAND	WA	98282
61	VINCENTZ GARRET T	56147	BOX 1572	WARD COVE	AK	99928
62	PEELER JUSTIN	56148	1900 CASCADE CREEK RD #9	SITKA	AK	99835
63	JOHANSON RUDOLPH K	56161	411 FRONT ST	KETCHIKAN	AK	99901
64	GLAAB GENE P	56164	609 OJA ST	SITKA	AK	99835
65	ALBER NINA L	56173	BOX 111	CORDOVA	AK	99574
66	DENKINGER TROY	56193	2221 HALIBUT POINT RD	SITKA	AK	99835
67	BECKER ROBERT J	56206	BOX 240238	DOUGLAS	AK	99824
68	SVENSON MIKE W	56237	104 SHARON DR	SITKA	AK	99835
69	GEIST RICHARD J	56244	3401 W LAWTON ST	SEATTLE	WA	98199
70	BRISCOE JIM	56245	1714 WILSON AVE	BELLINGHAM	WA	98225
71	EINARSON ED	56252	9311 VALLEY VIEW RD	BLAINE	WA	98230
72	EICHNER KEN	56262	5166 SHORELINE DR N	KETCHIKAN	AK	99901
73	BLANKENSHIP JEFF S	56268	1709 HALIBUT POINT RD #12	SITKA	AK	99835
74	ROSS MALCOLM J	56278	BOX 3476	HOMER	AK	99603
75	VERSTEEG KORY	56296	BOX 1775	PETERSBURG	AK	99833

	Permit holder name	Permit Serial No.	Address	City	State	Zip
76	ANK ROBERT	56299	19316 133RD PL SE	RENTON	WA	98058
77	OTNESS NELS K 3	56304	BOX 2058	PETERSBURG	AK	99833
78	ERTZBERGER ROCKY L	56309	404 BARR RD	GRAYS RIVER	WA	98621
79	COLE RALPH W	56327	14084 MADRONA DR	ANACORTES	WA	98221
80	LEACH LAUCHLIN	56330	2318 NE 105TH ST	SEATTLE	WA	98125
81	DEMMERT DAVID R 2	56339	BOX 6097	EDMONDS	WA	98026
82	JOHANSON NICHOLAS C	56347	1900 W NICKERSON ST #213	SEATTLE	WA	98119
83	CARROLL WESTON J	56359	BOX 3013	HOMER	AK	99603
84	WARFEL FRANK W	56371	BOX 1512	WRANGELL	AK	99929
85	MATHISEN SIGURD R	56389	BOX 1460	PETERSBURG	AK	99833
86	GILBERT JOHN W	56391	426 NEVA WAY	KODIAK	AK	99615
87	MACIAS ERIC	56397	1900 W NICKERSON ST # 116-82	SEATTLE	WA	98119
88	KALX ANDREW	56399	415 COLEMAN ST	JUNEAU	AK	99801
89	JENSEN BRAD A	56400	813 52ND ST	PORT TOWNSEND	WA	98368
90	DOBSZINSKY LEIF	56403	932 MADISON ST	PORT TOWNSEND	WA	98368
91	HALTINER ROBERT G	56408	BOX 808	PETERSBURG	AK	99833
92	CASTLE JAMES W	56409	87 SHOUP ST	KETCHIKAN	AK	99901
93	PATRICK KEVIN C	56423	2888 S 355TH ST	FEDERAL WAY	WA	98003
94	JOHNS LEROY E	56434	BOX 1126	SISTERS	OR	97759
95	HAYNES DANNY J	56454	BOX 7036	KETCHIKAN	AK	99901
96	BARKHOEFER TY	56496	103 SCARLETT WAY	SITKA	AK	99835
97	TISSYCHY JAMES A	56504	554 EAST ST	KETCHIKAN	AK	99901
98	BARTELDS DALE A	56507	301 WORTMAN LP	SITKA	AK	99835
99	MANOS WILLIAM J	56564	1566 KEKAULIKE AVE	KULA	HI	96790
100	JERKOVICH MARC E	56607	3710 HARBORVIEW DR	GIG HARBOR	WA	98332
101	ALEX WAYNE E	56609	BOX 20095	JUNEAU	AK	99802
102	VAUGHAN KELVIN	56619	BOX 1256	CRAIG	AK	99921
103	GRIN JEFFREY P	56621	BOX 397	WRANGELL	AK	99929
104	JERKOVICH NICK J 2	56659	3710 HARBORVIEW DR	GIG HARBOR	WA	98332
105	STEWART RANDY L	56672	11374 WALKER RD	MOUNT VERNON	WA	98273
106	MILLER JAMES L	56708	BOX 1184	PETERSBURG	AK	99833
107	CHRISTENSEN CHARLES L	56722	BOX 824	PETERSBURG	AK	99833
108	DAUGHERTY RICHARD M	56729	BOX 34864	JUNEAU	AK	99803
109	FRANULOVICH ANTHONY G	56785	1302 N AVE	ANACORTES	WA	98221
110	THYNES DEREK M	56788	BOX 1624	PETERSBURG	AK	99833
111	LEESE WILLIAM C	56794	1014 HOYT AVE	EVERETT	WA	98201
112	BABICH ANDREW P	56801	8306 25TH AVE CT NW	GIG HARBOR	WA	98332
113	ALLBRETT JASPER	56833	BOX 2223	SITKA	AK	99835
114	MUNKRES MATTHEW J	56853	9508 N HARBORVIEW DR	GIG HARBOR	WA	98332
115	CURRY JOHN H 2	56854	9445 SUNRISE RD	BLAINE	WA	98230
116	HANSON BRET	56915	2916 ST CLAIR ST	BELLINGHAM	WA	98226
117	BLANKENSHIP ERIC	56922	1808 EDGECUMBE DR	SITKA	AK	99835
118	SWANSON ROBERT L	56940	BOX 924	PETERSBURG	AK	99833
119	MATSON PAUL H	56976	1752 NW MARKET ST #800	SEATTLE	WA	98107
120	LUNDE JAN O	56995	18208 82ND DR NW	STANWOOD	WA	98292
121	JENNINGS HOLLIS	57025	1900 W NICKERSON ST #116-7	SEATTLE	WA	98119
122	GEORGE RICHARD D	57062	955 MARINE DR	BELLINGHAM	WA	98225
123	GIAMBRONE MATTHEW	57070	2590 TRADING POST TRAIL S	AFTON	MN	55001
124	MCILRAITH ROBERT W	57080	BOX 1515	EATONVILLE	WA	98328
125	DAHL JEROME E 2	57112	BOX 1275	PETERSBURG	AK	99833
126	DEMMERT KARL W	57115	BOX 556	CRAIG	AK	99921
127	CHANEY DOUGLAS W	57153	11719 MADERA DR SW	LAKEWOOD	WA	98499
128	PATRICK KELLAN	57194	1120 19TH AVE	SEATTLE	WA	98122
129	WARTMAN ADAM	57228	2144 NW 204TH ST	SHORELINE	WA	98177
130	LOCKABEY MICHAEL J	57244	BOX 1542	WRANGELL	AK	99929
131	DEMMERT ARCHIE W 3	57270	BOX 223	KLAWOCK	AK	99925
132	MARIFERN BRUCE E	57277	BOX 917	PETERSBURG	AK	99833
133	LINDEMUTH LONNIE M	57282	BOX 2069	SNOHOMISH	WA	98291
134	ZUANICH ANDY	57288	1115 W NORTH ST	BELLINGHAM	WA	98225
135	WELLINGTON VICTOR C 1	57300	BOX 69	METLAKATLA	AK	99926
136	KOHLHASE JASON	57333	10753 HORIZON DR	JUNEAU	AK	99801
137	JONES KENNETH M	57345	BOX 1044	HOMER	AK	99603
138	CHRISTENSEN DAVID B	57498	7301 164TH PL SW	EDMONDS	WA	98026
139	INGMAN ROGER L	57529	BOX 1155	SITKA	AK	99835
140	OLNEY-MILLER BAE	57638	505 OCAIN ST	SITKA	AK	99835
141	BOROVINA MICHAEL J	57667	3616 COLBY #731	EVERETT	WA	98201
142	PAWLAK THOMAS R	57669	435 LAWRENCE ST	PORT TOWNSEND	WA	98368
143	CASTLE DANIEL F	57673	4430 S TONGASS HWY	KETCHIKAN	AK	99901
144	JOHANSON RUDY M	57681	BOX 276	KLAWOCK	AK	99925
145	JOHNSON JOSH	57699	103 HORIZON WAY	SITKA	AK	99835
146	VEITEHANS GREGORY K	57703	210 24TH ST	PORT TOWNSEND	WA	98368
147	TANAKA RICHARD D	57716	BOX 2345	PORT HARDY	BC	V0N2P0
148	WHITE BLAINE R	57717	15719 S CLEAR VIEW LP	KENNEWICK	WA	99338
149	KADAKE HENRICH B 1	57718	BOX 188	KAKE	AK	99830
150	VAUGHAN HOUSTON	57719	BOX 770	CRAIG	AK	99921

	Permit holder name	Permit Serial No.	Address	City	State	Zip
151	WILLIAMS MARY A	57721	BOX 103	KAKE	AK	99830
152	MCCAY RODERICK D	57722	BOX 161	PETERSBURG	AK	99833
153	RECORDS RONALD J 2	57723	BOX 1345	CRAIG	AK	99921
154	THORNE SCOTT	57724	BOX 717	PICABO	ID	83348
155	KADAKE DELBERT B 2	57725	BOX 554	KAKE	AK	99830
156	DEMMERT ARTHUR J 2	57741	BOX 180	KLAWOCK	AK	99925
157	MCCOLLUM KENT	57755	BOX 2096	PETERSBURG	AK	99833
158	JOHNSON HANS A	57756	520 14TH ST	BOULDER	CO	80302
159	MANNING EDWARD N 2	57795	11170 RIDGERIM TRAIL SE	PORT ORCHARD	WA	98367
160	DEMMERT LAWRENCE E 2	57796	19425 27TH AVE NW	SHORELINE	WA	98177
161	PFUNDT ALEC	57851	BOX 1342	PETERSBURG	AK	99833
162	THOMAS NYLE D	57862	BOX 1744	PETERSBURG	AK	99833
163	EVENS CHRIS R	57894	BOX 886	PETERSBURG	AK	99833
164	PHIPPEN KENNETH S	57895	312 TILSON ST	SITKA	AK	99835
165	MARTINEZ MARTY J 2	57896	BOX 513	METLAKATLA	AK	99926
166	BLANDOV BRIAN J 1	57897	BOX 436	METLAKATLA	AK	99926
167	WALTZ JAMES T	57898	1418 191ST DR SE	SNOHOMISH	WA	98290
168	HAYWARD ROYCE L	57901	BOX 161	METLAKATLA	AK	99926
169	MILLER SPENCER G	57905	241 W HAMPTON LN	OLYMPIA	WA	98512
170	CLIFTON JAY	57906	3802 HALIBUT POINT RD	SITKA	AK	99835
171	GREEN KIRBY B	57925	418 HIGHLAND DR #3	SEATTLE	WA	98109
172	BRANTUAS JOHN C	57940	BOX 1377	PETERSBURG	AK	99833
173	MAJORS DANIEL A 2	57950	BOX 5358	KETCHIKAN	AK	99901
174	ONEIL DENNIS J	57990	BOX 1083	PETERSBURG	AK	99833
175	MATHISEN WAYNE T	57991	BOX 671	PETERSBURG	AK	99833
176	FOGLE CHARLES P	58044	1136 WOLKOFF LN	KODIAK	AK	99615
177	WINROD TITUS	58045	BOX 1291	CRAIG	AK	99921
178	KVERNVIK ADANNA	58048	BOX 1081	PETERSBURG	AK	99833
179	VELER WILLIAM	58051	BOX 387	HOONAH	AK	99829
180	JACKLET ALAN C	58062	4521 325TH AVE NE	CARNATION	WA	98014
181	ZUANICH SHIRLEY	58102	812 W CONNECTICUT ST	BELLINGHAM	WA	98225
182	BRIGHT TOBIAS N	58105	BOX 2097	PETERSBURG	AK	99833
183	FRANKLIN EMMA	58109	3401 W LAWTON ST	SEATTLE	WA	98199
184	SCHWANTES J.CARLOS	58197	BOX 2335	SITKA	AK	99835
185	ENLOE GLENDA	58238	2609 HALIBUT POINT RD	SITKA	AK	99835
186	NAGAMINE ROSS N	58246	3321 OHANA CT	KETCHIKAN	AK	99901
187	FRANKLIN KYLE	58247	BOX 62	PETERSBURG	AK	99833
188	DEMMERT NICHOLAS J	58248	BOX 1132	CRAIG	AK	99921
189	JOHANSON JOHN M	58267	BOX 276	KLAWOCK	AK	99925
190	UNDERHILL JOHN E	58297	103 KRESTOF DR	SITKA	AK	99835
191	RABB IAN	58318	753 1/2 ST. ANNS AVE	DOUGLAS	AK	99824
192	LUNDQUIST LOREN D	58350	BOX 244	EASTSOUND	WA	98254
193	MOROVIC DARKO L	58355	BOX 756	WESTPORT	WA	98595
194	GIERARD BRIAN M	58386	BOX 7343	KETCHIKAN	AK	99901
195	KAPP RYAN	58391	2202 TEAL CT	BELLINGHAM	WA	98229
196	GLENOVICH JAMES A	58476	818 17TH ST	BELLINGHAM	WA	98225
197	MARRESE ANDREW B 2	58486	2442 NW MARKET ST PMB #411	SEATTLE	WA	98107
198	YOUNG MARK N	58490	BOX 2016	SITKA	AK	99835
199	MARKUSEN JEFF	58500	9653 RONALD DR	BLAINE	WA	98230
200	STROOSMA SVEN	58503	18273 W BIG LAKE BLVD	MOUNT VERNON	WA	98274
201	NEWMAN DONALD J	58505	415 NW 120TH	SEATTLE	WA	98177
202	CURRALL TIMOTHY H	58507	433 FRONT ST	KETCHIKAN	AK	99901
203	LOVROVICH TOM A	58510	9705 JACOBSEN LN	GIG HARBOR	WA	98332
204	MARSDEN DANIEL M	58512	BOX 15	METLAKATLA	AK	99926
205	JAMES GEORGE S 2	58513	1123 BLACK BEAR RD	KETCHIKAN	AK	99901
206	DOBSZINSKY KURT D	58537	1989 DRAKE AVE	POINT ROBERTS	WA	98281
207	KOETJE JEFFREY A	58557	18180 DUNBAR RD	MOUNT VERNON	WA	98273
208	MALICH JOHN	58564	7809 OLYMPIC VIEW DR	GIG HARBOR	WA	98335
209	CARLE ARLENE	58580	BOX 32	HYDABURG	AK	99922
210	CANNON TODD	58593	12015 MARINE DR #239	MARYSVILLE	WA	98271
211	BALOVICH FRANK L	58602	BOX 1396	SITKA	AK	99835
212	MILLER JASON L	58789	BOX 1473	PETERSBURG	AK	99833
213	VAUGHAN JAMES	58807	BOX 770	CRAIG	AK	99921
214	MUSTAPPA FRANK M	58836	1517 HARRIS AVE	BELLINGHAM	WA	98225
215	HOLMSTROM MICHAEL G	58862	17952 MCLEAN RD	MOUNT VERNON	WA	98273
216	NELSON NORVAL E 2	58899	1625 FRITZ COVE RD	JUNEAU	AK	99801
217	BACON JAMES E	58921	1410 TONGASS AVE	KETCHIKAN	AK	99901
218	FILE MICHAEL A	58928	BOX 1666	PETERSBURG	AK	99833
219	PFUNDT BRYON	58936	BOX 1162	PETERSBURG	AK	99833
220	DENZINGER TROY	58973	2221 HALIBUT POINT RD	SITKA	AK	99835
221	GROSS BEN	58987	7362 W PARK HWY #696	WASILLA	AK	99654
222	OLSON NELS	58999	80872 S VALLEY RD	DUFUR	OR	97021
223	ROCHELEAU RICK B	59031	BOX 631	SITKA	AK	99835
224	ROSVOLD ERIC C	59035	BOX 1144	PETERSBURG	AK	99833
225	FRANKLIN C.DAVID	59066	3401 W LAWTON ST	SEATTLE	WA	98199

	Permit holder name	Permit Serial No.	Address	City	State	Zip
226	JONES DAVID C	59142	BOX 64	WINTHROP	WA	98862
227	KANDOLL BRIAN W	59192	BOX 1363	PETERSBURG	AK	99833
228	TROKA PAUL J	59203	8802 SOBEK LN	CONCRETE	WA	98237
229	ALFIERI MICHAEL 2	59221	18120 196TH AVE SE	RENTON	WA	98058
230	DOBRYDNIA RANDALL	59224	69 W MATTLE RD	KETCHIKAN	AK	99901
231	BEZMALINOVIC IVO R	59235	1916 PIKE PL #1255	SEATTLE	WA	98101
232	ROBERTS DARREN W	59248	BOX 1957	PORT HARDY	BC	V0N2P0
233	PETERMAN BRUCE	59306	610 SHEEHY RD	NIPOMO	CA	93444
234	GREGG RANDAL J	59331	BOX 20373	JUNEAU	AK	99802
235	SIMPSON BRIAN	59362	3104 PLYMOUTH DR	BELLINGHAM	WA	98225
236	DEMMERT STEVEN L	59391	3814 SERENE WAY	LYNNWOOD	WA	98087
237	GRANBERG KEVIN M	59394	BOX 2002	PETERSBURG	AK	99833
238	LIDDICOAT JOHN	59395	4115 BAKER AVE NW	SEATTLE	WA	98107
239	JACKSON JEFFREY S	59496	BOX 34345	JUNEAU	AK	99803
240	BROADHEAD WILLIAM T	59507	7505 SPOON CREEK DR	VICTOR	ID	83455
241	GOLDEN JEFFREY J	59571	8322 SILVER LAKE RD	MAPLE FALLS	WA	98266
242	GLENOVICH ROBERT P	59601	480 S STATE ST #102	BELLINGHAM	WA	98225
243	WYMAN SETH K	59640	5024 ROBINWOOD LN	BOW	WA	98232
244	PURATICH ROBERT J	59736	BOX 1223	GIG HARBOR	WA	98335
245	DEMMERT LONNIE E 2	59987	BOX 2683	STANWOOD	WA	98292
246	WARREN RONALD E	59997	BOX 34	CHEHALIS	WA	98532
247	BUSCHMANN CHRISTIAN	60001	BOX 898	PETERSBURG	AK	99833
248	NEBL NIKOULAS A	60054	3828 EVERGREEN AVE	KETCHIKAN	AK	99901
249	TREINEN CHARLES W	60055	2054 ARLINGTON DR	ANCHORAGE	AK	99517
250	PIECUCH JUSTIN J	60056	1923 NE LAURIE VIEW	POULSBO	WA	98370
251	MARSH KIRT O	60058	BOX 1421	PETERSBURG	AK	99833
252	CARLE JAN M	60076	BOX 1	HYDABURG	AK	99922
253	CARLE JOHN	60110	BOX 1	HYDABURG	AK	99922
254	JURLIN NICK 2	60158	76 CESAR PL	LAKE HAVASU C	AZ	86406
255	MILLER AARON L	60175	BOX 2144	PETERSBURG	AK	99833
256	DEMMERT CURTIS	60176	BOX 223	KLAWOCK	AK	99925
257	MACNAB WILLIAM	60177	BOX 711	PETERSBURG	AK	99833
258	CHRISTENSEN STEVE W	60180	6302 VISTA DR	FERNDALE	WA	98248
259	THOMASSEN JAY R	60201	BOX 1451	PETERSBURG	AK	99833
260	WHITETHORN LUKE J	60267	BOX 1716	PETERSBURG	AK	99833
261	PYLE DAVID P	60282	17423 SCHALIT WAY	LAKE OSWEGO	OR	97035
262	LEEKLEY ROBERT J	60299	BOX 217	PETERSBURG	AK	99833
263	SLAVEN GARY A	60374	BOX 205	PETERSBURG	AK	99833
264	DOBSZINSKY MARK	60416	17002 12TH AVE SW	NORMANDY PARK	WA	98166
265	BRIGHT JARED	60484	BOX 2097	PETERSBURG	AK	99833
266	STEVENS GARY J	60488	BOX 1572	WRANGELL	AK	99929
267	SEVERSON AARON	60500	BOX 507	PETERSBURG	AK	99033
268	NUGENT MARK J	60509	BOX 5382	KETCHIKAN	AK	99901
269	SCHILE GEORGE V	60511	1807 4TH ST	BELLINGHAM	WA	98225
270	SAVLAND STANLEY J	60512	BOX 621	HOONAH	AK	99829
271	ESQUIRO IZAAK J	60528	BOX 984	WARM SPRINGS	OR	97761
272	MCCULLOUGH CHARLES	60545	BOX 707	PETERSBURG	AK	99833
273	EVENS CRAIG J	60558	BOX 585	PETERSBURG	AK	99833
274	HAYNES BRADLEY S	60572	243 W MATTLE RD	KETCHIKAN	AK	99901
275	PEELER ALFRED W	60605	BOX 761	PETERSBURG	AK	99833
276	FINNEY BRANNON	60652	981 MITKOF HWY	PETERSBURG	AK	99833
277	SEVERSON MARK	60655	BOX 1502	PETERSBURG	AK	99833
278	ROBERTS RALPH W	60693	BOX 1957	PORT HARDY	BC	V0N2P0
279	GOOD STEVEN E	60710	BOX 85540	SEATTLE	WA	98145
280	LOVROVICH GREGG	60719	5310 72ND AVE NW	GIG HARBOR	WA	98335
281	ESQUIRO GEORGE C	60721	BOX 1993	PORT TOWNSEND	WA	98368
282	HALTINER DEAN R	60762	BOX 443	PETERSBURG	AK	99833
283	PETTICREW CHARLES J 1	60800	BOX 971	WRANGELL	AK	99929
284	BABICH MICHAEL	60873	13510 GOODNOUGH DR NW	GIG HARBOR	WA	98332
285	NEVERS TODD	61134	712 SIRSTAD ST	SITKA	AK	99835
286	CURRY LANCE E	61174	2190 FERNDALE TER	FERNDALE	WA	98248
287	MANDICH VIC	61404	520 SUNSET DR	HOQUIAM	WA	98550
288	PETERSON CHRISTOPHER C	61414	BOX 3982	KETCHUM	ID	83340
289	OTNESS ALAN D	61440	BOX 317	PETERSBURG	AK	99833
290	SEABECK KEVIN J	61447	8555 30TH NW	SEATTLE	WA	98117
291	LOVROVICH TIM	61459	7021 120TH ST CT NW	GIG HARBOR	WA	98332
292	GOSPODINOVIC DENNIS	61548	5087 ZANDER DR	BELLINGHAM	WA	98226
293	PHILLIPS JEB	61551	BOX 1253	PETERSBURG	AK	99833
294	CONNOR WILLIAM H 2	61566	BOX 1124	PETERSBURG	AK	99833
295	HUESTIS STEPHEN E	61590	12704 471ST AVE SE	NORTH BEND	WA	98045
296	JOHNSON RONALD C	61616	BOX 2232	WRANGELL	AK	99929
297	COCKRUM RUSSELL L	61617	5791 N TONGASS HWY	KETCHIKAN	AK	99901
298	CHENEY SCOTT W	61619	8 LOOKOUT MOUNTAIN LN	BELLINGHAM	WA	98229
299	BARRY DAVID	61628	BOX 6276	SITKA	AK	99835
300	EIDE L R	61652	BOX 15	PETERSBURG	AK	99833

	Permit holder name	Permit Serial No.	Address	City	State	Zip
301	CRANE VERNON M	61736	BOX 1376	HOMER	AK	99603
302	CROME DANIEL J	62606	BOX 1243	PETERSBURG	AK	99833
303	BRUNSMAN JAMES P	62650	BOX 105	DAYVILLE	OR	97825
304	THAIN TANNER	63109	BOX 824	CRAIG	AK	99921
305	BUECHE JAKOB	63230	2023 E SIMS WAY #207	PORT TOWNSEND	WA	98368
306	BARRY JOHN W	63280	800 HALIBUT POINT RD #C	SITKA	AK	99835
307	RAMSEY JAMISON T	63735	BOX 9631	KETCHIKAN	AK	99901
308	MCALLISTER THOMAS S	63826	9156 N DOUGLAS HWY	JUNEAU	AK	99802
309	BLANKENSHIP BRIAN V	64176	4316 VALLHALLA DR	SITKA	AK	99835
310	JONES KENNETH G	64527	4092 GINNETT RD	ANACORTES	WA	98221
311	KAPP TRAVIS	64528	4723 S PONDEROSA PK RD	PRESCOTT	AZ	86303
312	MOLLER RICHARD D	64994	BOX 1081	GIG HARBOR	WA	98332
313	FLINN CHRIS P	65398	927 15TH ST	BELLINGHAM	WA	98225
314	SIMERKA JAY	65418	1929 SHERIDAN ST	PORT TOWNSEND	WA	98368
315	COUNCILMAN CRAIG L	65483	11029 33RD DR SE	EVERETT	WA	98208

Dated: November 1, 2016.

Brian T. Pawlak,

CFO/Director, Office of Management and Budget, National Marine Fisheries Service.

[FR Doc. 2016–26846 Filed 11–4–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF022

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold a meeting of its Mackerel Advisory Panel.

DATES: The meeting will be held Tuesday, November 29, 2016; from 9:30 a.m. to 3 p.m.

ADDRESSES: The meeting will be held at the Gulf Council's Conference Room.

Council address: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607; (813) 348–1630 or on their Web site at *www.gulfcouncil.org.*

FOR FURTHER INFORMATION CONTACT: Ryan Rindone, Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The items of discussion on the agenda are as follows:

Mackerel Advisory Panel Agenda, Tuesday, November 29, 2016, 9:30 a.m.–3 p.m.

I. Introductions and Adoption of Agenda
II. Approval of November 30, 2015 Mackerel AP report minutes
III. Review of CMP Amendment 29 Public Hearing Draft—Gulf King Mackerel Allocation Sharing and Recreational Accountability Measures
  a. CMP 29 Decision Document
  b. AP Recommendations
IV. Other Business
  a. Discussion of King Mackerel Size Limits
  b. Discussion of Gulf Southern Zone Handline Trip Limits
Meeting Adjourns

The Agenda is subject to change, and the latest version along with other meeting materials will be posted on the Council's file server. To access the file server, the URL is *https://public.gulfcouncil.org:5001/webman/index.cgi,* or go to the Council's Web site and click on the File Server link in the lower left of the Council Web site (*http://www.gulfcouncil.org*).

The username and password are both ''gulfguest''. Click on the ''Library Folder'', then scroll down to ''Mackerel AP''.

The meeting will be webcast over the internet. A link to the webcast will be available on the Council's Web site, *http://www.gulfcouncil.org.*

Although other non-emergency issues not on the agenda may come before the Advisory Panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Advisory Panel will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira (see **ADDRESSES**), at least 5 working days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 2, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–26856 Filed 11–4–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 16–42]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Chang Suh, DSCA/SA&E/RAN, (703) 697–8975.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 16–42 with

attached Policy Justification and Sensitivity of Technology.

Dated: November 1, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable Paul D. Ryan
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

OCT 06 2016

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 16-42, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Iraq for defense articles and services estimated to cost $65.3 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

JAMES WORM
DEP DIR(A)
FOR J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified Document Provided Under Separate Cover)

BILLING CODE 5001–06–C

Transmittal No. 16–42

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* The Republic of Iraq

(ii) Total Estimated Value:

Major Defense Equipment*	$ 0 million
Other	65.3 million
TOTAL	65.3 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Non-MDE:

Two (2) Cessna AC–208 aircraft with dual rail Hellfire launcher capability on each wing

Two (2) AN/ALE–47 Electronic Countermeasure Dispensers

Two (2) AAR–60 Missile Launch Warning Systems

Four (4) AN/AAQ–35 (Wescam MX–15D) Electro-Optical Infrared Imaging Systems

Two (2) LAU–131–A Launchers

Additionally, non-MDE includes contractor aircraft modifications, spare parts, publication updates, aircraft ferry, and miscellaneous parts. The total estimated program cost is $65.3 million

(iv) *Military Department:* Air Force

(v) *Prior Related Cases, if any:* IQ–D–QAH for $20M signed on 13 Feb 2009 for C/AC–208 CLS, Transmittal 11–23. IQ–D–QAF for $5M signed 26 Oct 2008 for C/AC–208 CLS, Transmittal 11–23.

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Annex attached.

(viii) *Date Report Delivered to Congress:* October 6, 2016

*as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Republic of Iraq—AC–208 Aircraft

The Government of Iraq requests to purchase two (2) Cessna AC–208 aircraft that include: Dual rail LAU–131 Hellfire launcher capability on each wing, AN/ALE–47 electronic countermeasure dispenser, AN/AAR–60 Missile Launch Warning System, AN/AAQ–35 ElectroOptical Infrared Imaging System, contractor aircraft modifications, spare parts, publication updates, aircraft ferry, and miscellaneous parts. The estimated total case value is $65.3 million.

This proposed sale contributes to the foreign policy and national security of the United States by helping to improve the security of a strategic partner. This proposed sale directly supports Iraq and serves the interests of the people of Iraq and the United States.

Iraq originally purchased three (3) AC–208 and three (3) C–208 aircraft in 2008. The Cessna aircraft are used to support Iraqi military operations against al-Qaeda affiliate and Islamic State of Iraq and the Levant (ISIL) forces. The purchase of two (2) additional aircraft enables the Iraqi Air Force to continue its fight against ISIL. Iraq will have no difficulty absorbing these aircraft into its armed forces.

The proposed sale of this equipment and support does not alter the basic military balance in the region.

The principal contractor is Orbital ATK, Falls Church, VA. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. or contractor representatives to Iraq.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale. All defense articles and services are approved for release by our foreign disclosure office.

Transmittal No. 16–42

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. Cessna AC–208: The Armed Caravan is a specifically modified Cessna C–208 capable of operating in austere environments while providing real-time intelligence, surveillance, and reconnaissance (ISR) and low collateral damage kinetic strike capabilities. It is equipped with an integrated electro-optical and infrared (EO/IR) laser sensor suite which gives it a day/night ISR capability with a laser illuminator, range finder, and designator to allow employment of the AGM–114M missile through a 1760 mil bus interface. The aircraft has two external hard points for weapons and fuel carriage. The Iraq variant will be equipped for use with AGM–114 missiles already in country. Critical components (cockpit and engine) will have aircraft armor able to withstand small arms fire. Hardware and software are UNCLASSIFIED. Technical data and documentation to be provided are UNCLASSIFIED.

2. The proposed configuration includes the AN/ALE–47 Countermeasure Dispenser Set (CMDS), the AN/AAR–60 Missile Approach Warning System, the AN/AAQ–35 MX (Wescam MX–15D) Electro-Optical Infrared Imaging System, and dual rail LAU–131 Hellfire launcher capability on each wing.

3. The AN/ALE–47 CMDS provides an integrated threat-adaptive, computer controlled capability for dispensing chaff, flares, and active radio frequency expendables. The AN/ALE–47 system enhances aircraft survivability in sophisticated threat environments.

4. The threats countered by the CMDS include radar-directed anti-aircraft artillery (AAA), radar command-guided missiles, radar homing guided missiles, and infrared guided missiles. The U.S. is not providing any threat data. The system is internally mounted and may be operated as a stand-alone system or integrated with other on-board electronic warfare and avionics systems. Expendable routines tailored to the immediate aircraft and threat environment may be dispensed using one of four operational modes. Hardware is UNCLASSIFIED. Software is SECRET. Technical data and documentation provided are UNCLASSIFIED.

5. The AN/AAR–60 Missile Approach Warning System is a passive, true imaging sensor device that is optimized to detect the radiation signature of a threat missile's exhaust plume within the ultra violet solar blind spectral band. Functionally, the architecture detects incoming missile threats and indicates their direction of arrival with the 'maximum' of warning time. Hardware and software are UNCLASSIFIED. Technical data and documentation provided are UNCLASSIFIED.

6. The AN/AAQ–35 MX (Wescam MX–15D) is a gyro-stabilized, multi-spectral, multi field of view electro-optical infrared imaging system. The system provides surveillance laser illumination and laser designation through use of an externally mounted turret sensor and internally mounted master control. Sensor video imagery is displayed in the aircraft real time and may be recorded for subsequent ground analysis. Hardware is UNCLASSIFIED. Technical data and documentation provided are UNCLASSIFIED.

7. The LAU–131 launcher is tube shaped, 59.8 inches in length, and 10.125 inches in diameter. It weighs 65 pounds and is capable of carrying seven rockets (2.75 inch or 70mm). Hardware is UNCLASSIFIED. Technical data and documentation provided are UNCLASSIFIED.

8. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

9. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification. Moreover, the benefits to be derived from this sale, as outlined in the Policy Justification, outweigh the potential damage that could result if the sensitive technology were revealed to unauthorized persons.

10. All defense articles and services listed in this transmittal are authorized for release and export to the Government of Iraq.

[FR Doc. 2016–26763 Filed 11–4–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2016–ICCD–0123]

Agency Information Collection Activities; Comment Request; Application for the Rural Education Achievement Program (REAP)

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before January 6, 2017.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0123. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–349, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Eric Schulz, 202–260–7349.

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: Application for the Rural Education Achievement Program (REAP).

OMB Control Number: 1810–0646.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 6,049.

Total Estimated Number of Annual Burden Hours: 20,683.

Abstract: This data collection is pursuant to the Secretary's authority under Part B of Title V of the Elementary and Secondary Education Act (ESEA), as amended by the Every Student Succeeds Act (ESSA, Public Law 114–95) to award funds under two grant programs designed to address the unique needs of rural school districts—the Small, Rural School Achievement (SRSA) program (ESSA Section 5211) and the Rural and Low-Income School (RLIS) program (ESSA Section 5221). For both grant programs, the Department awards funds based on a calculation of the allocation each eligible LEA should receive according to formulas prescribed in the statute. This data collection package consists of two forms and related documents that are used to accomplish the grant award process: (1) Form 1 is a spreadsheet used by SEAs to submit information to identify RLIS- and SRSA-eligible LEAs and to allocate funds based on the appropriate formula, and (2) Form 2 is an application form for SRSA-eligible LEAs to apply for funding. The REAP Eligibility Spreadsheet (Form 1) has been modified from the previously-approved collection under OMB #1810–0646, to exclude data that is no longer needed because of improvements in processes, and to include data that is now required due to changes in the new statute.

The main thrust of this revision involves the SRSA Application Package (Form 2). The REAP program office seeks to replace the existing G5 document with the Standard Form (SF) 424 (OMB #4040–0004), available through *GRANTS.gov.* The move to *GRANTS.gov* is necessary because beginning with the FY 2017 grant award cycle, all SRSA-eligible LEAs will submit an annual application in order to receive SRSA grant funds. In addition, this revision removes Standard Form-LLL Disclosure of Lobbying activities, which no longer applies to SRSA applicants, and adds the General Education Provisions Act (GEPA) Section 427 requirements, which do apply.

Dated: November 2, 2016.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–26798 Filed 11–4–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2889–004]

San Bernardino Valley Municipal Water District; Notice of Effectiveness of Surrender

On April 17, 1981, the Commission issued a Notice of Approval by Operation of Law granting an exemption from licensing to the San Bernardino Valley Municipal Water District (exemptee) for the proposed Lytle Creek and Foothills Pipeline Project, FERC No. 2889. The unconstructed project would be located on Lytle Creek, in San Bernardino County, California.

On March 30, 2016, the exemptee filed a petition with the Commission to surrender the exemption. The exemptee has been unable to construct the project due to changes in water availability and pricing tariffs.

Accordingly, the Commission accepts the exemptee's surrender of its exemption from licensing, effective 30 days from the date of this notice, at the close of business on Friday, November 25, 2016. No license, exemption, or preliminary permit applications for the project site may be filed until Monday, November 28, 2016.

Dated: October 26, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–26589 Filed 11–4–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of the Commission's staff may attend the following meetings related to the transmission planning activities of the New York Independent System Operator, Inc. (NYISO):

NYISO Electric System Planning Working Group Meeting

November 7, 2016, 10:00 a.m.–4:00 p.m. (EST).

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/committees/documents.jsp?com=bic_espwg&directory=2016-11-07*.

NYISO Business Issues Committee Meeting

November 16, 2016, 10:00 a.m.–4:00 p.m. (EST).

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/committees/documents.jsp?com=bic&directory=2016-11-16*.

NYISO Operating Committee Meeting

November 17, 2016, 10:00 a.m.–4:00 p.m. (EST).

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/committees/documents.jsp?com=oc&directory=2016-11-17*.

NYISO Management Committee Meeting

November 30, 2016, 10:00 a.m.–4:00 p.m. (EST).

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/committees/documents.jsp?com=mc&directory=2016-11-30*.

The discussions at the meetings described above may address matters at issue in the following proceedings:

New York Independent System Operator, Inc., Docket No. ER13–102.

New York Independent System Operator, Inc., Docket No. ER15–2059.

New York Transco, LLC, Docket No. ER15–572.

For more information, contact James Eason, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–8622 or *James.Eason@ferc.gov.*

Dated: November 1, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–26845 Filed 11–4–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL17–4–000]

Dynegy Midwest Generation, LLC; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On November 1, 2016, the Commission issued an order in Docket No. EL17–4–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2012), instituting an investigation into the justness and reasonableness of Dynegy Midwest Generation, LLC's rate. *Dynegy Midwest Generation, LLC,* 157 FERC ¶ 61,079 (2016).

The refund effective date in Docket No. EL17–4–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL17–4–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2016), within 21 days of the date of issuance of the order.

Dated: November 1, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–26837 Filed 11–4–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–1777–001.
Applicants: Southwest Power Pool, Inc.
Description: Compliance filing: Heartland Consumers Power District Formula Rate Compliance Filing to be effective 10/1/2015.
Filed Date: 11/1/16.
Accession Number: 20161101–5128.
Comments Due: 5 p.m. ET 11/22/16.

Docket Numbers: ER15–2131–003; ER12–2037–008; ER12–2314–006; ER15–2129–002; ER15–2130–003.
Applicants: Milo Wind Project, LLC, Roosevelt Wind Project, LLC, Slate Creek Wind Project, LLC, Spearville 3, LLC, Spinning Spur Wind LLC.
Description: Notice of Non-Material Change in Status of the EDF–RE MBR Affilliates in SPP BAA.
Filed Date: 10/31/16.
Accession Number: 20161031–5301.
Comments Due: 5 p.m. ET 11/21/16.

Docket Numbers: ER17–257–000.
Applicants: NorthWestern Corporation.
Description: § 205(d) Rate Filing: SA 767 2nd Rev—NITSA with Basin Electric Power Cooperative to be effective 1/1/2017.
Filed Date: 11/1/16.
Accession Number: 20161101–5000.
Comments Due: 5 p.m. ET 11/22/16.

Docket Numbers: ER17–258–000.
Applicants: NorthWestern Corporation.
Description: Tariff Cancellation: Notice of Cancellation: SA 312 8th Rev, NITSA with Southern Montana to be effective 1/1/2017.
Filed Date: 11/1/16.
Accession Number: 20161101–5001.
Comments Due: 5 p.m. ET 11/22/16.

Docket Numbers: ER17–259–000.
Applicants: Darby Power, LLC.
Description: § 205(d) Rate Filing: Darby Power, LLC Reactive Service Filing to be effective 12/31/9998.
Filed Date: 11/1/16.
Accession Number: 20161101–5046.
Comments Due: 5 p.m. ET 11/22/16.

Docket Numbers: ER17–260–000.
Applicants: Gavin Power, LLC.
Description: § 205(d) Rate Filing: Gavin Power, LLC Reactive Service Filing to be effective 12/31/9998.
Filed Date: 11/1/16.
Accession Number: 20161101–5048.

Comments Due: 5 p.m. ET 11/22/16.

Docket Numbers: ER17–261–000.

Applicants: Lawrenceburg Power, LLC.

Description: § 205(d) Rate Filing: Lawrenceburg Power, LLC Reactive Service Filing to be effective 12/31/9998.

Filed Date: 11/1/16.

Accession Number: 20161101–5049.

Comments Due: 5 p.m. ET 11/22/16.

Docket Numbers: ER17–262–000.

Applicants: Waterford Power, LLC.

Description: § 205(d) Rate Filing: Waterford Power, LLC Reactive Service Filing to be effective 12/31/9998.

Filed Date: 11/1/16.

Accession Number: 20161101–5050.

Comments Due: 5 p.m. ET 11/22/16.

Docket Numbers: ER17–263–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Queue Position NQ139, Original Service Agreement No. 4573 to be effective 10/26/2016.

Filed Date: 11/1/16.

Accession Number: 20161101–5082.

Comments Due: 5 p.m. ET 11/22/16.

Docket Numbers: ER17–264–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: AEP Formula Rate Revisions to be effective 7/1/2017.

Filed Date: 11/1/16.

Accession Number: 20161101–5083.

Comments Due: 5 p.m. ET 11/22/16.

Docket Numbers: ER17–265–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2017–11–01_ETEC Tex-La RTO Adder Request to be effective 1/1/2017.

Filed Date: 11/1/16.

Accession Number: 20161101–5087.

Comments Due: 5 p.m. ET 11/22/16.

Docket Numbers: ER17–266–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to WMPA SA No. 3318, Queue No. X3–075 re: Assignment to Marina Energy to be effective 6/4/2014.

Filed Date: 11/1/16.

Accession Number: 20161101–5088.

Comments Due: 5 p.m. ET 11/22/16.

Docket Numbers: ER17–267–000.

Applicants: Southwestern Public Service Company.

Description: § 205(d) Rate Filing: Tri-County Formula Rate to be effective 1/1/2017.

Filed Date: 11/1/16.

Accession Number: 20161101–5097.

Comments Due: 5 p.m. ET 11/22/16.

Docket Numbers: ER17–268–000.

Applicants: Mid-Atlantic Interstate Transmission, LLC.

Description: Baseline eTariff Filing: Modifications to Purchase and Sale Agreement with Niagara Mohawk to be effective 11/1/2016.

Filed Date: 11/1/16.

Accession Number: 20161101–5126.

Comments Due: 5 p.m. ET 11/22/16.

Docket Numbers: ER17–269–000.

Applicants: Pennsylvania Electric Company.

Description: Baseline eTariff Filing: Penelec Modifications to Purchase and Sale Agreement with Niagara Mohawk to be effective 11/1/2016.

Filed Date: 11/1/16.

Accession Number: 20161101–5127.

Comments Due: 5 p.m. ET 11/22/16.

Docket Numbers: ER17–270–000.

Applicants: Jersey Central Power & Light.

Description: Baseline eTariff Filing: JCP&L Modifications to Purchase and Sale Agreement with Niagara Mohawk to be effective 11/1/2016.

Filed Date: 11/1/16.

Accession Number: 20161101–5129.

Comments Due: 5 p.m. ET 11/22/16.

Docket Numbers: ER17–271–000.

Applicants: DATC Path 15, LLC.

Description: § 205(d) Rate Filing: Revised Appendix I 2017 to be effective 1/1/2017.

Filed Date: 11/1/16.

Accession Number: 20161101–5130.

Comments Due: 5 p.m. ET 11/22/16.

Docket Numbers: ER17–272–000.

Applicants: Startrans IO, LLC.

Description: § 205(d) Rate Filing: TRBAA 2017 Update to be effective 1/1/2017.

Filed Date: 11/1/16.

Accession Number: 20161101–5134.

Comments Due: 5 p.m. ET 11/22/16.

Docket Numbers: ER17–273–000.

Applicants: Midcontinent Independent System Operator, Inc., Entergy Services, Inc.

Description: § 205(d) Rate Filing: 2016–11–01_Filing to update Entergy Schedule 41 to be effective 1/1/2017.

Filed Date: 11/1/16.

Accession Number: 20161101–5160.

Comments Due: 5 p.m. ET 11/22/16.

Docket Numbers: ER17–274–000.

Applicants: GenOn Energy Management, LLC.

Description: § 205(d) Rate Filing: Revised Tariff to be effective 12/1/2016.

Filed Date: 11/1/16.

Accession Number: 20161101–5162.

Comments Due: 5 p.m. ET 11/22/16.

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: November 1, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–26842 Filed 11–4–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP16–492–000]

EcoEléctrica, L.P.; Notice of Intent To Prepare an Environmental Assessment for the Proposed LNG Terminal Sendout Capacity Increase Project, and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the LNG Terminal Sendout Capacity Increase Project involving operation of facilities by EcoEléctrica, L.P. (EcoEléctrica) in Peñuelas, Puerto Rico. The Commission will use this EA in its decision-making process to determine whether the project is in the public interest.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in

Washington, DC on or before December 1, 2016.

If you sent comments on this project to the Commission before the opening of this docket on August 11, 2016, you will need to file those comments in Docket No. CP16–492–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

Public Participation

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' If you are filing a comment on a particular project, please select ''Comment on a Filing'' as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (CP16–492–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Summary of the Proposed Project

EcoEléctrica proposes to use spare vaporization capacity to supply an additional 93 milllion standard cubic feet per day of natural gas. According to EcoEléctrica, no changes will be made to the design of the existing liquefied natural gas (LNG) vaporization system or to the existing LNG storage tank or in-tank LNG sendout pumps as part of the project. The project would not include any construction activities and no ground disturbance would be required for construction or operation of this project.

The general location of the project facilities is shown in appendix 1.[1]

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of an Authorization. NEPA also requires us [2] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the operation of the proposed project under these general headings:

- Air quality and noise;
- public safety; and
- cumulative impacts

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before making our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate with us in the preparation of the EA.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who own homes within certain distances of aboveground facilities and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If we publish and distribute the EA, copies of the EA will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the ''Document-less Intervention Guide'' under the ''e-filing'' link on the Commission's Web site. Motions to intervene are more fully described at *http://www.ferc.gov/resources/guides/how-to/intervene.asp.*

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *www.ferc.gov* using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* CP16–492). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: November 1, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–26844 Filed 11–4–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD16–25–000]

Utilization in the Organized Markets of Electric Storage Resources as Transmission Assets Compensated Through Transmission Rates, for Grid Support Services Compensated in Other Ways, and for Multiple Services; Supplemental Notice of Technical Conference

As announced in the Notice of Technical Conference issued on September 30, 2016 in the above-captioned proceeding,[1] Federal Energy Regulatory Commission (Commission) staff will convene a technical conference on November 9, 2016, at the Commission's offices at 888 First Street NE., Washington, DC 20426 beginning at approximately 10:00 a.m. and ending at approximately 3:00 p.m. (Eastern Time). Commission staff will lead the conference, and Commissioners may attend.

The purpose of the technical conference is to discuss the utilization of electric storage resources as transmission assets compensated through transmission rates, for grid support services that are compensated in other ways, and for multiple services. Attached to this supplemental notice is an agenda for the technical conference, including a more detailed description of the topics to be considered for discussion at the conference. Questions that speakers should be prepared to discuss are grouped by topic. This notice includes the list of panelists for each of the three topic areas.

This technical conference will be transcribed and webcast. Transcripts of the technical conference will be available for a fee from Ace-Federal Reporters, Inc. at (202) 347–3700. A free webcast of this event will be available through *www.ferc.gov.* Anyone with internet access who wants to view this event can do so by navigating to the Calendar of Events at *www.ferc.gov* and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for webcasts and offers the option of listening to the workshop via phone-bridge for a fee. If you have any questions, visit *www.CapitolConnection.org* or call (703) 993–3100.

Those interested in attending the technical conference or viewing the webcast are encouraged to register at *https://www.ferc.gov/whats-new/registration/11-09-16-form.asp.*

Commission technical conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov,* call (866) 208–3372 (toll free) or (202) 208–8659 (TTY), or send a FAX to (202) 208–2106 with the required accommodations.

For more information about this technical conference, please contact:

Rahim Amerkhail (Technical Information), Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8266, *rahim.amerkhail@ferc.gov*

Sarah McKinley (Logistical Information), Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8004, *sarah.mckinley@ferc.gov*

Heidi Nielsen (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8435, *heidi.nielsen@ferc.gov*

Dated: November 1, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–26835 Filed 11–4–16; 8:45 am]

BILLING CODE 6717–01–P

[1] *Utilization In the Organized Markets of Electric Storage Resources as Transmission Assets Compensated Through Transmission Rates, for Grid Support Services Compensated in Other Ways, and for Multiple Services,* Docket No. AD16–25–000 (Sept. 30, 2016).

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: ER17–236–000.
Applicants: Southwestern Public Service Company.
Description: § 205(d) Rate Filing: 10–31–16 SAP Ministerial Filing to be effective 1/1/2016.
Filed Date: 10/31/16.
Accession Number: 20161031–5200.
Comments Due: 5 p.m. ET 11/21/16.

Docket Numbers: ER17–237–000.
Applicants: Northern Indiana Public Service Company.
Description: Tariff Cancellation: Cancellation of PST and Associated Service Agreements to be effective 1/1/2017.
Filed Date: 10/31/16.
Accession Number: 20161031–5207.
Comments Due: 5 p.m. ET 11/21/16.

Docket Numbers: ER17–238–000.
Applicants: Southwestern Public Service Company.
Description: § 205(d) Rate Filing: SAP Ministerial Filing to be effective 4/16/2016.
Filed Date: 10/31/16.
Accession Number: 20161031–5222.
Comments Due: 5 p.m. ET 11/21/16.

Docket Numbers: ER17–239–000.
Applicants: TPE Alta Luna, LLC.
Description: Baseline eTariff Filing: Baseline new to be effective 1/3/2017.
Filed Date: 10/31/16.
Accession Number: 20161031–5225.
Comments Due: 5 p.m. ET 11/21/16.

Docket Numbers: ER17–240–000.
Applicants: Old Dominion Electric Cooperative.
Description: § 205(d) Rate Filing: Request to Update Depreciation Rates for Wholesale Production Service to be effective 1/1/2017.
Filed Date: 10/31/16.
Accession Number: 20161031–5229.
Comments Due: 5 p.m. ET 11/21/16.

Docket Numbers: ER17–241–000.
Applicants: Northern Indiana Public Service Company.

Description: Tariff Cancellation: Cancellation of OATT and Associated Service Agreements to be effective 1/1/2017.
Filed Date: 10/31/16.
Accession Number: 20161031–5231.
Comments Due: 5 p.m. ET 11/21/16.
Docket Numbers: ER17–242–000.
Applicants: Gavin Power, LLC.
Description: Baseline eTariff Filing: Gavin Power, LLC Application for Market Based Rate Authorization to be effective 1/1/2017.
Filed Date: 10/31/16.
Accession Number: 20161031–5234.
Comments Due: 5 p.m. ET 11/21/16.
Docket Numbers: ER17–243–000.
Applicants: Lawrenceburg Power, LLC.
Description: Baseline eTariff Filing: Lawrenceburg Power, LLC Application for Market Based Rate Authorization to be effective 1/1/2017.
Filed Date: 10/31/16.
Accession Number: 20161031–5242.
Comments Due: 5 p.m. ET 11/21/16.
Docket Numbers: ER17–244–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Interconnection Service Agreement No. 4063; Queue AB2–014 to be effective 9/30/2016.
Filed Date: 10/31/16.
Accession Number: 20161031–5248.
Comments Due: 5 p.m. ET 11/21/16.
Docket Numbers: ER17–245–000.
Applicants: Waterford Power, LLC.
Description: Baseline eTariff Filing: Waterford Power, LLC Application for Market Based Rate Authorization to be effective 1/1/2017.
Filed Date: 10/31/16.
Accession Number: 20161031–5251.
Comments Due: 5 p.m. ET 11/21/16.
Docket Numbers: ER17–246–000.
Applicants: Dynegy Oakland, LLC.
Description: § 205(d) Rate Filing: Annual RMR Section 205 Filing and RMR Schedule F Informational Filing to be effective 1/1/2017.
Filed Date: 10/31/16.
Accession Number: 20161031–5256.
Comments Due: 5 p.m. ET 11/21/16.
Docket Numbers: ER17–247–000.
Applicants: Wisconsin Power and Light Company.
Description: § 205(d) Rate Filing: WPL Changes in Depreciation & Amortization for Wholesale Production Service to be effective 1/1/2017.
Filed Date: 10/31/16.
Accession Number: 20161031–5257.
Comments Due: 5 p.m. ET 11/21/16.
Docket Numbers: ER17–248–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: SCE 2017 ETC Reliability Service Rate Update to be effective 1/1/2017.
Filed Date: 10/31/16.
Accession Number: 20161031–5258.
Comments Due: 5 p.m. ET 11/21/16.
Docket Numbers: ER17–249–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Stated Rates Filing to be effective 1/1/2017.
Filed Date: 10/31/16.
Accession Number: 20161031–5259.
Comments Due: 5 p.m. ET 11/21/16.
Docket Numbers: ER17–250–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: 2016 TRBAA Update Filing to be effective 1/1/2017.
Filed Date: 10/31/16.
Accession Number: 20161031–5260.
Comments Due: 5 p.m. ET 11/21/16.
Docket Numbers: ER17–251–000.
Applicants: San Joaquin Cogen, LLC.
Description: Tariff Cancellation: Notice of Cancellation to be effective 11/1/2016.
Filed Date: 10/31/16.
Accession Number: 20161031–5261.
Comments Due: 5 p.m. ET 11/21/16.
Docket Numbers: ER17–252–000.
Applicants: 2016 ESA Project Company, LLC.
Description: Baseline eTariff Filing: Application for MBR Authority and Initial BaselineTariff Filing to be effective 11/1/2016.
Filed Date: 10/31/16.
Accession Number: 20161031–5266.
Comments Due: 5 p.m. ET 11/21/16.
Docket Numbers: ER17–253–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: Omaha Public Power District Formula Rate Revisions to be effective 1/1/2017.
Filed Date: 10/31/16.
Accession Number: 20161031–5267.
Comments Due: 5 p.m. ET 11/21/16.
Docket Numbers: ER17–254–000.
Applicants: Otter Tail Power Company.
Description: § 205(d) Rate Filing: Temporary Structure Sharing Agreement to be effective 10/1/2016.
Filed Date: 10/31/16.
Accession Number: 20161031–5268.
Comments Due: 5 p.m. ET 11/21/16.
Docket Numbers: ER17–255–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: SWE (PowerSouth Territorial) NITSA Amendment (Add PREC Pitchford Farms DP) to be effective 10/31/2015.
Filed Date: 10/31/16.
Accession Number: 20161031–5270.
Comments Due: 5 p.m. ET 11/21/16.
Docket Numbers: ER17–256–000.
Applicants: Darby Power, LLC.
Description: Baseline eTariff Filing: Darby Power, LLC Application for Market-Based Rate Authorization to be effective 1/1/2017.
Filed Date: 10/31/16.
Accession Number: 20161031–5271.
Comments Due: 5 p.m. ET 11/21/16.

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: November 1, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–26836 Filed 11–4–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the

decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202 502–8659.

Docket No.	File date	Presenter or requester
Exempt:		
1. P–2082–062	10–17–2016	U.S. House Representative Jared Huffman.
2. P–10482–000	10–20–2016	U.S. House Representative Chris Gibson.
3. P–10482–000	10–20–2016	U.S. Senator Kirsten Gillibrand.
4. CP15–558–000	10–26–2016	FERC Staff.[1]

[1] Memo reporting October 11, 2016 phone call with New Jersey Rate Counsel.

Dated: November 1, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–26841 Filed 11–4–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER17–239–000]

TPE Alta Luna, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding TPE Alta Luna, LLC 's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 21, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 1, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–26839 Filed 11–4–16; 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 Number: PR17–3–000.

Applicants: ONEOK Gas Transportation, L.L.C.

Description: Tariff filing per 284.123(e) + (g): Revised Statement of Operating Conditions for Section 311 Transportation Service to be effective 10/1/2016; Filing Type: 1280.

Filed Date: 10/28/2016.

Accession Number: 201610285143.

Comments Due: 5 p.m. ET 11/18/16.

284.123(g) Protests Due: 5 p.m. ET 12/27/16.

Docket Numbers: RP17–97–000.

Applicants: Southern Star Central Gas Pipeline, Inc.

Description: § 4(d) Rate Filing: Misc Tariff Filing October 2016 to be effective 12/1/2016.

Filed Date: 10/31/16.

Accession Number: 20161031–5040.

Comments Due: 5 p.m. ET 11/14/16.

Docket Numbers: RP17–98–000.

Applicants: Dominion Transmission, Inc.
Description: Dominion Transmission, Inc. submits tariff filing per 154.204: DTI—October 31, 2016 Nonconforming Service Agreement to be effective 11/1/2016.
Filed Date: 10/31/16.
Accession Number: 20161031–5051.
Comments Due: 5 p.m. ET 11/14/16.
Docket Numbers: RP17–99–000.
Applicants: Columbia Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Housekeeping Filing to be effective 12/1/2016.
Filed Date: 10/31/16.
Accession Number: 20161031–5052.
Comments Due: 5 p.m. ET 11/14/16.
Docket Numbers: RP17–100–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negotiated Rates—Chevron Release eff 11–1–2016 to be effective 11/1/2016.
Filed Date: 10/31/16.
Accession Number: 20161031–5058.
Comments Due: 5 p.m. ET 11/14/16.
Docket Numbers: RP17–101–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Colonial Releases eff 11–1–2016 to be effective 11/1/2016.
Filed Date: 10/31/16.
Accession Number: 20161031–5059.
Comments Due: 5 p.m. ET 11/14/16.
Docket Numbers: RP17–102–000.
Applicants: Rager Mountain Storage Company LLC.
Description: § 4(d) Rate Filing: Rager Mountain October 2016 Clean Up Filing to be effective 12/1/2016.
Filed Date: 10/31/16.
Accession Number: 20161031–5068.
Comments Due: 5 p.m. ET 11/14/16.
Docket Numbers: RP17–103–000.
Applicants: East Tennessee Natural Gas, LLC.
Description: § 4(d) Rate Filing: OPC K410465 11–1–2016 Negotiated Rate to be effective 11/1/2016.
Filed Date: 10/31/16.
Accession Number: 20161031–5071.
Comments Due: 5 p.m. ET 11/14/16.
Docket Numbers: RP17–104–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negotiated Rates—Con Ed Releases eff 11–1–2016 to be effective 11/1/2016.
Filed Date: 10/31/16.
Accession Number: 20161031–5077.
Comments Due: 5 p.m. ET 11/14/16.
Docket Numbers: RP17–105–000.
Applicants: Fayetteville Express Pipeline LLC.
Description: § 4(d) Rate Filing: Fuel Filing on 10–31–16 to be effective 12/1/2016.
Filed Date: 10/31/16.
Accession Number: 20161031–5103.
Comments Due: 5 p.m. ET 11/14/16.
Docket Numbers: RP17–106–000.
Applicants: Texas Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Amendments to Neg Rate Agmts (Bosco Meter Change) to be effective 11/1/2016.
Filed Date: 10/31/16.
Accession Number: 20161031–5106.
Comments Due: 5 p.m. ET 11/14/16.
Docket Numbers: RP17–107–000.
Applicants: Texas Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Remove Agreements Expiring 10/31/2016 to be effective 11/1/2016.
Filed Date: 10/31/16.
Accession Number: 20161031–5108.
Comments Due: 5 p.m. ET 11/14/16.
Docket Numbers: RP17–108–000.
Applicants: ETC Tiger Pipeline, LLC.
Description: § 4(d) Rate Filing: Fuel Filing on 10–31–16 to be effective 12/1/2016.
Filed Date: 10/31/16.
Accession Number: 20161031–5110.
Comments Due: 5 p.m. ET 11/14/16.
Docket Numbers: RP17–109–000.
Applicants: Rockies Express Pipeline LLC.
Description: § 4(d) Rate Filing: Neg Rate 2016–10–31 ARM to be effective 11/1/2016.
Filed Date: 10/31/16.
Accession Number: 20161031–5114.
Comments Due: 5 p.m. ET 11/14/16.
Docket Numbers: RP17–110–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) Rate Filing: Amendments to Neg Rate Agmts (Bosco Meter Change) to be effective 11/1/2016.
Filed Date: 10/31/16.
Accession Number: 20161031–5119.
Comments Due: 5 p.m. ET 11/14/16.
Docket Numbers: RP17–111–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (QEP 37657 to Atmos 45527) to be effective 11/1/2016.
Filed Date: 10/31/16.
Accession Number: 20161031–5120.
Comments Due: 5 p.m. ET 11/14/16.
Docket Numbers: RP17–112–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmts (Atlanta Gas 8438 to various shippers eff 11–1–16) to be .effective 11/1/2016.
Filed Date: 10/31/16.
Accession Number: 20161031–5123.
Comments Due: 5 p.m. ET 11/14/16.
Docket Numbers: RP17–113–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (FPL 41618 to Tenaska 47321, DTE 47381) to be effective 11/1/2016.
Filed Date: 10/31/16.
Accession Number: 20161031–5124.
Comments Due: 5 p.m. ET 11/14/16.
Docket Numbers: RP17–114–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Methanex 42805 to BP 47327) to be effective 11/1/2016.
Filed Date: 10/31/16.
Accession Number: 20161031–5125.
Comments Due: 5 p.m. ET 11/14/16.
Docket Numbers: RP17–115–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (PH 41455 to Texla 47331, BP 47392, Seq 47383) to be effective 11/1/2016.
Filed Date: 10/31/16.
Accession Number: 20161031–5126.
Comments Due: 5 p.m. ET 11/14/16.
Docket Numbers: RP17–116–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (EOG 34687 to Trans LA 47332) to be effective 11/1/2016.
Filed Date: 10/31/16.
Accession Number: 20161031–5128.
Comments Due: 5 p.m. ET 11/14/16.
Docket Numbers: RP17–117–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Encana 37663 to Texla 47333, ConocoPhillips 47386, 47400) to be effective 11/1/2016.
Filed Date: 10/31/16.
Accession Number: 20161031–5130.
Comments Due: 5 p.m. ET 11/14/16.
Docket Numbers: RP17–118–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (EOG 34687 to NJR 47338) to be effective 11/1/2016.
Filed Date: 10/31/16.
Accession Number: 20161031–5132.
Comments Due: 5 p.m. ET 11/14/16.
Docket Numbers: RP17–119–000.
Applicants: Tallgrass Interstate Gas Transmission, L.
Description: § 4(d) Rate Filing: NRA Rate 2016/31/10 Northwestern to be effective 11/1/2016.
Filed Date: 10/31/16.
Accession Number: 20161031–5135.

Comments Due: 5 p.m. ET 11/14/16.

Docket Numbers: RP17–120–000.

Applicants: Texas Eastern Transmission, LP.

Description: § 4(d) Rate Filing: TETLP ASA DEC 2016 FILING to be effective 12/1/2016.

Filed Date: 10/31/16.

Accession Number: 20161031–5145.

Comments Due: 5 p.m. ET 11/14/16.

Docket Numbers: RP17–121–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 10/31/16 Negotiated Rates—Vitol Inc. (HUB) 7495–89 to be effective 11/1/2016.

Filed Date: 10/31/16.

Accession Number: 20161031–5162.

Comments Due: 5 p.m. ET 11/14/16.

Docket Numbers: RP17–122–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 10/31/16 Negotiated Rates—Hartree Partners, LP (HUB) 7090–89 to be effective 11/1/2016.

Filed Date: 10/31/16.

Accession Number: 20161031–5189.

Comments Due: 5 p.m. ET 11/14/16.

Docket Numbers: RP17–123–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rates—KeySpan Releases eff 11–1–2016 to be effective 11/1/2016.

Filed Date: 10/31/16.

Accession Number: 20161031–5191.

Comments Due: 5 p.m. ET 11/14/16.

Docket Numbers: RP17–124–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 10/31/16 Negotiated Rates—Sequent Energy Management (HUB) 3075–89 to be effective 11/1/2016.

Filed Date: 10/31/16.

Accession Number: 20161031–5205.

Comments Due: 5 p.m. ET 11/14/16.

Docket Numbers: RP17–125–000.

Applicants: Northern Natural Gas Company.

Description: § 4(d) Rate Filing: 20161031 Negotiated Rate to be effective 11/1/2016.

Filed Date: 10/31/16.

Accession Number: 20161031–5209.

Comments Due: 5 p.m. ET 11/14/16.

Docket Numbers: RP17–126–000.

Applicants: Midcontinent Express Pipeline LLC.

Description: § 4(d) Rate Filing: Q-West/Aethon Negotiated Rate to be effective 11/1/2016.

Filed Date: 10/31/16.

Accession Number: 20161031–5211.

Comments Due: 5 p.m. ET 11/14/16.

Docket Numbers: RP17–127–000.

Applicants: Natural Gas Pipeline Company of America.

Description: § 4(d) Rate Filing: J–W Gathering Removal of Expired Contract to be effective 11/1/2016.

Filed Date: 10/31/16.

Accession Number: 20161031–5239.

Comments Due: 5 p.m. ET 11/14/16.

Docket Numbers: RP17–128–000.

Applicants: Alliance Pipeline L.P.

Description: § 4(d) Rate Filing: 2016–10–31 J.Aron Partial Assignment to be effective 11/1/2016.

Filed Date: 10/31/16.

Accession Number: 20161031–5241.

Comments Due: 5 p.m. ET 11/14/16.

Docket Numbers: RP17–129–000.

Applicants: Equitrans, L.P.

Description: § 4(d) Rate Filing: Assignment of TAPO Energy Agreement to Jerry Poling to be effective 11/1/2016.

Filed Date: 10/31/16.

Accession Number: 20161031–5244.

Comments Due: 5 p.m. ET 11/14/16.

Docket Numbers: RP17–130–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rates—Con Ed Ramapo Releases eff 11–1–2016 to be effective 11/1/2016.

Filed Date: 10/31/16.

Accession Number: 20161031–5263.

Comments Due: 5 p.m. ET 11/14/16.

Docket Numbers: RP17–131–000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Negotiated Rate Agreement Filing (WPX Marketing LLC Nov 2016) to be effective 11/1/2016.

Filed Date: 10/31/16.

Accession Number: 20161031–5265.

Comments Due: 5 p.m. ET 11/14/16.

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: November 1, 2016

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–26843 Filed 11–4–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER17–228–000]

King Forest Industries, Inc.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of King Forest Industries, Inc.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 21, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for

electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 1, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–26838 Filed 11–4–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2935–026]

Melaver/Enterprise Mill, LLC; Enterprise Mill LLC; Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

On October 12, 2016, Melaver/Enterprise Mill, LLC (transferor) and Enterprise Mill LLC (transferee) filed an application for the transfer of license of the Enterprise Mill Project No. 2935. The project is located on the Augusta Canal of the Savannah River in Richmond County, Georgia. The project does not occupy federal lands.

The applicants seek Commission approval to transfer the license for the Enterprise Mill Project Melaver/Enterprise Mill, LLC to Enterprise Mill LLC.

Applicants Contact: For transferor: Ms. Karen Hudspeth, Melaver/Enterprise Mill, LLC, c/o Melaver, Inc., 114 Barnard Street, Suite 1A, Savannah, GA 31401, phone: 912–236–0781. For transferee: Mr. Carlos Imery, Enterprise Mill LLC, 201 Alhambra Circle, Suite 1205, Coral Gables, FL 33134, phone: 561–212–8331.

FERC Contact: Patricia W. Gillis, (202) 502–8735, *patricia.gillis@ferc.gov.*

Deadline for filing comments, motions to intervene, and protests: 30 days from the date that the Commission issues this notice. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–2935–026.

Dated: November 1, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–26840 Filed 11–4–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9954–99–Region 10]

Washington State Department of Ecology Prohibition of Discharges of Vessel Sewage; Receipt of Petition and Preliminary Affirmative Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice—receipt of petition and preliminary affirmative determination.

SUMMARY: Notice is given that, pursuant Clean Water Act Section 312(f)(3), the Washington State Department of Ecology has determined that the protection and enhancement of the quality of the waters of Puget Sound requires greater environmental protection, and has petitioned the United States Environmental Protection Agency, Region 10, for a determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for those waters, so that the State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters. Washington State has proposed to establish a ''No-Discharge Zone'' (NDZ) for all marine waters of Washington State inward from the line between New Dungeness Lighthouse and the Discovery Island Lighthouse to the Canadian border, and fresh waters of Lake Washington, Lake Union, and connecting waters between and to Puget Sound.

The western boundary of the NDZ would be the exit of the Strait of Juan de Fuca near the entrance of Admiralty Inlet. This boundary is known and visible to vessel operators as it is the line between New Dungeness Lighthouse and Discovery Island Lighthouse. The northern boundary would be the border with Canada and heading south including all marine waters down to the south end of the south Sound and Hood Canal. The fresh waters of Lake Washington, Union Bay, Montlake Cut, Portage Bay, Lake Union, Fremont Cut, the Lake Washington Ship Canal, and Salmon Bay (the connecting waters from Lake Washington to Puget Sound) would be included. For more information regarding the State's planned NDZ, please go to *http://www.ecy.wa.gov/programs/wq/nonpoint/CleanBoating/nodischargezone.html.*

Today's notice seeks public comment on EPA's tentative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters subject to Washington's planned NDZ.

DATES: Comments regarding this tentative determination must be received on or before December 7, 2016.

ADDRESSES: Submit your comments to the *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Joel Salter, Oregon Operations Office, Water Program Coordinator, 805 SW Broadway, Suite 500, Portland OR 97205; telephone number: (503) 326–2653; fax number: (503) 326–3399.; email address: *salter.joel@epa.gov,*

SUPPLEMENTARY INFORMATION: Notice is given that the Washington State Department of Ecology has petitioned the United States Environmental Protection Agency (EPA), Region 10, pursuant to section 312(f)(3) of the Clean Water Act, 33 U.S.C. 1322, for a

determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters of Puget Sound. As described in the State's petition, submitted to EPA on July 21, 2016, Ecology included in its application a certification that the protection and enhancement of the waters described in the petition require greater environmental protection than the applicable Federal standard along with pumpout facility information required by EPA regulations. See 40 CFR 140.4. Ecology also submitted supplemental information to EPA on October 14, 2016, regarding commercial vessel pumpout availability in Puget Sound. EPA's role under Section 312(f)(3) of the Clean Water Act is to determine whether adequate pumpout facilities are reasonably available, and EPA is seeking comments on this determination only.

Adequacy and Availability of Sewage Pumpout Facilities

Guidelines issued pursuant to the Clean Vessel Act for recreational vessels recommend one pumpout station for every 300–600 boats [Clean Vessel Act: Pumpout Station and Dump Station Technical Guidelines, **Federal Register**, Vol. 59, No. 47, March 10, 1994]. In its petition, the State described the recreational vessel population in Puget Sound and the pumpout facilities and mobile pumpout services that are available for use.

The State used two methods to develop a reasonable estimate of the recreational vessel population in Puget Sound. The first method was based on boater registration records obtained from the Washington State Department of Licensing (DOL). Using data from the DOL, the maximum estimated number of recreational vessels in each of the Washington State counties bordering Puget Sound that might require access to pumpout facilities or services under NDZ regulations (*i.e.,* boats larger than 21 feet) is 43,677. Vessels under 21 feet were not included in the estimate because they typically do not have an installed toilet. Because boater registration data may include a number of small, locally registered, commercial vessels such as fishing boats or tug boats, the total may be an overestimate.

The second method was based on the number of moorages and slips available to boaters, using Google Earth imagery captured during the summers of 2011 and 2012 to count vacant and occupied marina slips and moored vessels. Using this method, the State estimates a recreational vessel population of 23,555. The State believes that this also may be an overestimate, albeit less of an overestimate than the number calculated using the DOL boater registration data.

The State's petition also provided information about 173 pumpout units at 102 locations, and 21 mobile pumpout boats available for recreational vessels in Puget Sound. Both the location and availability of these pumpout facilities and services appear to approximately track the overall distribution of the recreational vessel population. The ongoing costs for recreational vessels to pumpout is minimal, with most pumpouts being free or $5 per pumpout. The majority of pumped sewage is sent to wastewater treatment plants; however, some is sent to onsite septic tanks that meet federal requirements.

The most conservative estimate of the ratio of pumpout facilities to recreational vessels is 1:171 boats for each pumpout facility, not including the mobile services. Based on DOL vessel registration data, there is a maximum of 43,677 recreation vessels in Puget Sound that could require access to pumpout facilities. As noted above, this is the State's most conservative (high) estimate. Using a 40 percent peak occupancy rate recommended by the Clean Vessel Act Technical Guidelines cited above, EPA has calculated that 17,471 of the 43,677 boats recreational vessels would require access to a pumpout facility during peak boating season. The State identified 102 recreational pumpout locations, which results in a ratio of 171 recreational vessels for each pumpout location, not including the mobile services. Applying the same 40% occupancy rate to the lower recreational vessel estimate of 23,555 obtained from the moorage count results in a ratio of 92 recreational vessels for each pumpout location, not including the mobile services.

Based on the number of available recreational pumpouts, which well exceeds the recommended minimum ratio of 1:600 using the most conservative estimates, EPA tentatively determines that adequate pumpout facilities for the safe and sanitary removal and treatment of sewage for recreational vessels are reasonably available for the waters of Puget Sound.

Puget Sound is also used by many different sizes and types of commercial vessels. The State used a study conducted by the Puget Sound Maritime Air Forum (Starcrest, 2007) to develop a reasonable estimate of commercial vessel use of Puget Sound. The study concluded that there were 2,937 entries of large oceangoing vessels into Puget Sound in 2005, and an estimated 678 other commercial vessels that operate mostly within Puget Sound (*e.g.,* escort tugs) or have Puget Sound as their home port (*e.g.,* the fleet of fishing vessels that travels to Alaska each year). According to the State, current vessel statistics are estimated to be similar to the data from 2005.

The large, oceangoing transient commercial vessels that are only in Puget Sound for a short period of time (*e.g.,* large cruise ships, freighters and tankers) have large enough holding tanks to hold their waste during the time they are in Puget Sound, with some exceptions. All Washington State Ferries (WSDOT ferries) and U.S. military vessels have holding tanks and use large-scale pumpout facilities where they are moored. Smaller commercial vessels, such as ferries, tugboats, excursion vessels, and fishing vessels with installed toilets can use the stationary pumpouts, mobile pumpout service vessels, some of the recreational pumpouts, or shore-based pumper trucks, described in more detail below.

The State identified eight stationary pumpouts dedicated to WSDOT ferries, three dedicated to U.S. Navy vessels, one dedicated to the Victoria Clipper vessels and one for the McNeil Island Department of Corrections vessels. The Port of Bellingham cruise terminal area also has three stationary pumpouts, one of which is used for Alaska Marine Highway vessels and two other pumpouts that can serve other commercial vessels. Although not included in this analysis, EPA notes that two more commercial pumpouts are being installed, one in Seattle for all commercial vessels and another at the Port of Bellingham mostly for fishing vessels. Estimated dates for completion are March and September 2017, respectively.

The State's supplemental information identified five companies that specialize in commercial marine work and that are capable of removing sewage from commercial vessel holding tanks. These five companies have a combined total of approximately 52 trucks (capacity ranging from 2,200–7,500 gallons each) and two mobile barges (capacity of 3,000 gallons each). These companies serve all of Puget Sound and can provide pumpout services at a variety of docks and ports for all types of commercial vessels, including tugs, fishing vessels, USCG vessels, smaller cruise ships, tankers, and other vessels.

The State's petition and supplemental information also identified 21–23 mobile pumpout vessels. These mobile pumpouts primarily service recreational boats, but several have serviced commercial vessels such as charter boats, fishing vessels, U.S. Coast Guard

vessels, and passenger vessels. The mobile pumpout boats have a capacity between 40 and 450 gallons and cover vast areas geographically as they are able to move to vessels, although some stay within their own marina or harbor area. In addition to the pumpouts described above, there are approximately 140 licensed or certified pumper truck companies in Puget Sound that primarily pump out septic tanks, but that can also pump out vessel sewage. The number of trucks in each company ranges from 1–13, and approximately half of these companies contacted by the State are currently, or are willing to, pump out commercial vessel sewage.

The State indicates that the number of commercial vessels that are likely to be in regular need of pumpout facilities with a NDZ would include the non-ocean going vessels that include tugboats, commercial fishing vessels, small passenger vessels, NOAA research and survey vessels, WSDOT Ferries, military and other government vessels, excursion and other commercial vessels. Given that the WSDOT Ferries, military vessels, and Victoria Clipper vessels all have dedicated stationary pumpouts, this leaves an approximate 600 vessels that would be in need of other pumpout facilities. With the two stationary commercial pumpouts, at least 52 Sound-wide commercial pumper trucks, and the two Sound-wide mobile commercial pumpout barges described above, this amounts to at least 56 pumpouts available for commercial vessels which results in an approximate ratio of 11:1. This estimated ratio may be conservative, given that a number of the mobile pumpout boats and pumper trucks described above may also provide commercial pumpout services. Based on this information, EPA tentatively determines that adequate pumpout facilities for the safe and sanitary removal and treatment of sewage for commercial vessels are reasonably available for the waters of Puget Sound.

Table of Facilities

A list of pumpout facilities, phone numbers, locations, hours of operation, water depth and fees is provided at this link to the Washington Dept. of Ecology Web site: *http://www.ecy.wa.gov/programs/wq/nonpoint/CleanBoating/VesselPumpoutTables.pdf.*

Based on the information above, EPA proposes to make an affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters of Puget Sound. A 30-day period for public comment has been opened on this matter, and EPA invites any comments relevant to this proposed determination. As noted above, EPA's authority under Clean Water Act section 312(f)(3) is to determine whether adequate pumpout facilities are reasonably available and EPA is therefore seeking comments on this determination only. If, after the public comment period ends, EPA makes a final affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters of Puget Sound, the State may, in accordance with CWA section 312(f)(3), completely prohibit the discharge from all vessels of any sewage, whether treated or not, into those waters.

Dated: October 27, 2016.

Dennis McLerran,

Regional Administrator, Region 10.

[FR Doc. 2016–26877 Filed 11–4–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2013–0573; FRL–9954–96–OAR]

California State Motor Vehicle Pollution Control Standards; Malfunction and Diagnostic System Requirements and Enforcement for 2004 and Subsequent Model Year Passenger Cars, Light Duty Trucks, and Medium Duty Vehicles and Engines; Notice of Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Decision.

SUMMARY: The Environmental Protection Agency (EPA) is granting the California Air Resources Board's (''CARB'') request for a waiver of Clean Air Act preemption to enforce amendments to regulations entitled ''Malfunction and Diagnostic System Requirements—2004 and Subsequent Model-Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles and Engines'' (''OBD II Requirements'') and amendments to CARB's regulations entitled ''Enforcement of Malfunction and Diagnostic Systems Requirements for 2004 and Subsequent Model-Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles and Engines'' (''OBD II Enforcement Regulation''). This decision is issued under the authority of the Clean Air Act (''CAA'' or ''the Act'').

DATES: Petitions for review must be filed by January 6, 2017.

ADDRESSES: EPA has established a docket for this action under Docket ID EPA–HQ–OAR–2013–0573. All documents relied upon in making this decision, including those submitted to EPA by CARB, are contained in the public docket. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air and Radiation Docket in the EPA Headquarters Library, EPA West Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The Public Reading Room is open to the public on all federal government working days from 8:30 a.m. to 4:30 p.m.; generally, it is open Monday through Friday, excluding holidays. The telephone number for the Reading Room is (202) 566–1744. The Air and Radiation Docket and Information Center's Web site is *http://www.epa.gov/oar/docket.html.* The email address for the Air and Radiation Docket is: *a-and-r-docket@epa.gov,* the telephone number is (202) 566–1742, and the fax number is (202) 566–9744. An electronic version of the public docket is available through the federal government's electronic public docket and comment system at *http://www.regulations.gov.* After opening the *www.regulations.gov* Web site, enter EPA–HQ–OAR–2013–0573 in the ''Enter Keyword or ID'' fill-in box to view documents in the record. Although a part of the official docket, the public docket does not include Confidential Business Information (''CBI'') or other information whose disclosure is restricted by statute.

EPA's Office of Transportation and Air Quality (''OTAQ'') maintains a Web page that contains general information on its review of California waiver and authorization requests. Included on that page are links to prior waiver **Federal Register** notices, some of which are cited in today's notice; the page can be accessed at *http://www.epa.gov/otaq/cafr.htm.*

FOR FURTHER INFORMATION CONTACT: David Dickinson, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. (6405J) NW., Washington, DC 20460. Telephone: (202) 343–9256. Fax: (202) 343–2800. Email: *dickinson.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

CARB initially adopted the OBD II regulation in July 1990 and has adopted a number of amendments subsequently. The OBD II regulation directs motor vehicle manufacturers to incorporate

vehicle onboard diagnostic systems meeting particular requirements on all new passenger cars, light-duty trucks, and medium-duty vehicles and engines. Specifically, manufacturers are required to install OBD II systems that effectively monitor all emission-related components and systems on the motor vehicle for proper operation and for deterioration or malfunctions that cause emissions to exceed specific thresholds. The regulation also requires that OBD II systems provide specific diagnostic information in a standardized format through a standardized serial data link on-board the vehicles to ensure that service and repair technicians can properly and promptly repair identified malfunctions.

EPA issued a waiver under section 209(b) of the CAA for the OBD II regulations, as last amended through 1995, on October 11, 1996.[1] After the granting of the waiver, CARB adopted further amendments to the OBD II regulation in 1997 and 2003.[2] CARB subsequently filed requests on December 24, 1997 and October 30, 2003, that the EPA respectively find the amendments to the OBD II Requirements adopted in 1997 and 2003 be found to be within the scope of the previously granted OBD II waiver. The October 30, 2003, request further asked that OBD II Enforcement Regulation be found within the scope of the previously granted waivers for ''California's Enforcement of New and In-Use Vehicle Standards,'' title 13, Cal. Code Regs. Section 2100 *et seq.*[3] EPA published a notice of opportunity for hearing and comment on the 1997 and 2003 California requests on February 5, 2004.[4]

On August 9, 2007, CARB adopted additional amendments to the OBD II Requirements and minor amendments to the OBD II Enforcement Regulation and to its emission warranty regulations. The 2007 OBD II Requirements amendments were made, *inter alia,* to address manufacturer compliance concerns and to align the monitoring requirements with those adopted by CARB in 2005 for heavy duty diesel engines.[5] By letter dated January 22, 2008, CARB requested that EPA find the 2007 amendments fall within the scope of the previous OBD II waiver.

On April 5, 2010, CARB adopted additional amendments to the OBD II Requirements, but not to the OBD II Enforcement Regulation.[6] The 2010 OBD II Requirements amendments were made to primarily harmonize the medium-duty diesel vehicle requirements with revisions to monitoring requirements for heavy-duty diesel engines.[7] By letter dated December 15, 2010, CARB requested that EPA find that the 2010 OBD II Requirements amendments fall within the scope of the previous waiver or alternatively, that a new waiver be granted for the amendments.

On March 12, 2012, and on June 26, 2013, CARB adopted additional amendments to the OBD II Requirements and to the OBD II Enforcement Regulation. The 2012 OBD II Requirements amendments were primarily made to relax and/or clarify OBD II Requirements in response to manufacturer concerns. The 2013 OBD II Requirements amendments primarily affect medium-duty vehicles, to align the OBD II monitoring requirements with those adopted by CARB for heavy duty diesel engines. By letter dated February 12, 2014, CARB requested that EPA find that the 2012 and 2013 OBD II amendments fall within the scope of the previous waiver or, alternatively, that a full waiver be granted for the amendments.

The various amendments, noted above, to the OBD II Requirements are codified at title 13, California Code of Regulations, section 1968.2. The various amendments, noted above, to the OBD II Enforcement Regulations are codified at title 13, California Code of Regulations, section 1968.5. The scope of today's waiver specifically addresses the 2007 through 2013 amendments, and sections 1968.2 and 1968.5.

II. Principles Governing this Review

A. Scope of Review

Section 209(a) of the CAA provides:

> No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part. No State shall require certification, inspection or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.[8]

Section 209(b)(1) of the Act requires the Administrator, after an opportunity for public hearing, to waive application of the prohibitions of section 209(a) for any state that has adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966, if the state determines that its state standards will be, in the aggregate, at least as protective of public health and welfare as applicable federal standards.[9] However, no such waiver shall be granted if the Administrator finds that: (A) The protectiveness determination of the state is arbitrary and capricious; (B) the state does not need such state standards to meet compelling and extraordinary conditions; or (C) such state standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act.[10]

[1] The decision was signed on October 2, 1996, and published at 61 FR 53371 (October 11, 1996). Included in the waiver decision were the 1992, 1993, and 1995 amendments. CARB's initial OBD II regulations were codified at Title 13, California Code of Regulations (CCR), Section 1968.1

[2] The CARB Board (Board) initially approved the amendments at rulemakings held respectively on December 12, 1996 and April 25, 2002. In 2003 (upon the final adoption of the amendments initially adopted in 2002), CARB codified the regulations at section 1968.2 (this section carried over most of the monitoring requirements of section 1968.1, and apply to 2004 and subsequent model year vehicles). The 2003 amendments included several new provisions that expressly applied to vehicles after the date of the amendments. The 2003 amendments also included OBD–II specific enforcement provisions, including requirements for post-assembly line evaluation of production vehicles (section 1968.2(j)) and in-use testing procedures at 1968.5

[3] *See* 61 FR 53371 (October 11, 1996), 43 FR 9344 (March 7, 1978), and 43 FR 25729 (June 14, 1978) for grant of EPA's waivers for ''California's Enforcement of New and In-Use Vehicle Standards'' at title 13, CCR, section 2100 *et seq.* CARB's OBD II Requirements generally set monitoring requirements on various emission control components and the OBD II Enforcement Regulation generally sets forth the manufacturing testing requirements and expected follow up from manufacturers based on in-use testing results.

[4] *See* 69 FR 5542 (February 5, 2004). EPA has not issued a waiver determination regarding the 1997 and 2003 amendments.

[5] Many of the amendments pertain to monitoring requirements for gasoline vehicles which CARB maintains were adopted to provide relief to manufacturers and to address their concerns about complying with the requirements. CARB also amended the OBD II requirements to address light- and medium-duty manufacturer concerns with complying with the malfunction thresholds for certain diesel emission controls and to better align the OBD II requirements with those that had been adopted for heavy-duty diesel engines in the HD OBD regulation. CARB also amended section 1968.5, including specific criteria in determining whether mandatory recall is appropriate for noncompliant OBD II systems that present valid testing of the affected vehicles in the California Smog Check program.

[6] The California Office of Administrative Law (OAL) approved the 2010 OBD II amendments on May 18, 2010 and the amendments primarily modify section 1968.2.

[7] The 2010 amendments include changes that relax the malfunction thresholds until the 2013 model year for three major emission controls: Particulate matter (PM) filters, oxides of nitrogen (NO_X) catalysts, and NO_X sensors.

[8] CAA § 209(a). 42 U.S.C. 7543(a).

[9] CAA § 209(b)(1). 42 U.S.C. 7543(b)(1). California is the only state that meets section 209(b)(1)'s requirement for obtaining a waiver. *See* S. Rep. No. 90–403 at 632 (1967).

[10] CAA § 209(b)(1). 42 U.S.C. 7543(b)(1).

Key principles governing this review are that EPA should limit its inquiry to the specific findings identified in section 209(b)(1) of the Clean Air Act, and that EPA will give substantial deference to the policy judgments California has made in adopting its regulations. In previous waiver decisions, EPA has stated that Congress intended the Agency's review of California's decision-making to be narrow. EPA has rejected arguments that are not specified in the statute as grounds for denying a waiver:

> The law makes it clear that the waiver requests cannot be denied unless the specific findings designated in the statute can properly be made. The issue of whether a proposed California requirement is likely to result in only marginal improvement in California air quality not commensurate with its costs or is otherwise an arguably unwise exercise of regulatory power is not legally pertinent to my decision under section 209, so long as the California requirement is consistent with section 202(a) and is more stringent than applicable Federal requirements in the sense that it may result in some further reduction in air pollution in California.[11]

This principle of narrow EPA review has been upheld by the U.S. Court of Appeals for the District of Columbia Circuit.[12] Thus, EPA's consideration of all the evidence submitted concerning a waiver decision is circumscribed by its relevance to those questions that may be considered under section 209(b)(1).

If California amends regulations that were previously waived by EPA, California may ask EPA to determine that the amendments are within the scope of the earlier waiver. A within-the-scope determination for such amendments is permissible without a full authorization review if three conditions are met. First, the amended regulations must not undermine California's previous determination that its standards, in the aggregate, are as protective of public health and welfare as applicable federal standards. Second, the amended regulations must not affect consistency with section 202(a) of the Act, following the same criteria discussed above in the context of full waivers. Third, the amended regulations must not raise any ''new issues'' affecting EPA's prior waivers.[13]

B. Burden and Standard of Proof

As the U.S. Court of Appeals for the D.C. Circuit has made clear in *MEMA I,* opponents of a waiver request by California bear the burden of showing that the statutory criteria for a denial of the request have been met:

> [T]he language of the statute and its legislative history indicate that California's regulations, and California's determinations that they must comply with the statute, when presented to the Administrator are presumed to satisfy the waiver requirements and that the burden of proving otherwise is on whoever attacks them. California must present its regulations and findings at the hearing and thereafter the parties opposing the waiver request bear the burden of persuading the Administrator that the waiver request should be denied.[14]

The Administrator's burden, on the other hand, is to make a reasonable evaluation of the information in the record in coming to the waiver decision. As the court in *MEMA I* stated: ''here, too, if the Administrator ignores evidence demonstrating that the waiver should not be granted, or if he seeks to overcome that evidence with unsupported assumptions of his own, he runs the risk of having his waiver decision set aside as 'arbitrary and capricious.'' '[15] Therefore, the Administrator's burden is to act ''reasonably.''[16]

With regard to the standard of proof, the court in *MEMA I* explained that the Administrator's role in a section 209 proceeding is to:

> [. . .]consider all evidence that passes the threshold test of materiality and . . . thereafter assess such material evidence against a standard of proof to determine whether the parties favoring a denial of the waiver have shown that the factual circumstances exist in which Congress intended a denial of the waiver.[17]

In that decision, the court considered the standards of proof under section 209 for the two findings related to granting a waiver for an ''accompanying enforcement procedure.'' Those findings involve: (1) Whether the enforcement procedures impact California's prior protectiveness determination for the associated standards, and (2) whether the procedures are consistent with section 202(a). The principles set forth by the court, however, are similarly applicable to an EPA review of a request for a waiver of preemption for a standard. The court instructed that ''the standard of proof must take account of the nature of the risk of error involved in any given decision, and it therefore varies with the finding involved. We need not decide how this standard operates in every waiver decision.''[18]

With regard to the protectiveness finding, the court upheld the Administrator's position that, to deny a waiver, there must be ''clear and compelling evidence'' to show that proposed enforcement procedures undermine the protectiveness of California's standards.[19] The court noted that this standard of proof also accords with the congressional intent to provide California with the broadest possible discretion in setting regulations it finds protective of the public health and welfare.[20]

With respect to the consistency finding, the court did not articulate a standard of proof applicable to all proceedings, but found that the opponents of the waiver were unable to meet their burden of proof even if the standard were a mere preponderance of the evidence. Although *MEMA I* did not explicitly consider the standards of proof under section 209 concerning a waiver request for ''standards,'' as compared to a waiver request for accompanying enforcement procedures, there is nothing in the opinion to suggest that the court's analysis would not apply with equal force to such determinations. EPA's past waiver decisions have consistently made clear that: ''[E]ven in the two areas concededly reserved for Federal judgment by this legislation—the existence of 'compelling and extraordinary' conditions and whether the standards are technologically feasible—Congress intended that the standards of EPA review of the State decision to be a narrow one.''[21]

C. Deference to California

In previous waiver decisions, EPA has recognized that the intent of Congress in creating a limited review based on specifically listed criteria was to ensure that the federal government did not second-guess state policy choices. As the Agency explained in one prior waiver decision:

> It is worth noting . . . I would feel constrained to approve a California approach to the problem which I might also feel unable to adopt at the federal level in my own capacity as a regulator.. . . Since a balancing of risks and costs against the potential

[11] ''Waiver of Application of Clean Air Act to California State Standards,'' 36 FR 17458 (Aug. 31, 1971). The more stringent standard expressed here, in 1971, was superseded by the 1977 amendments to section 209, which established that California must determine that its standards are, in the aggregate, at least as protective of public health and welfare as applicable federal standards.

[12] *See, e.g., Motor and Equip. Mfrs Assoc.* v. *EPA,* 627 F.2d 1095 (D.C. Cir. 1979) (''*MEMA I*'').

[13] *See* ''California State Motor Vehicle Pollution Control Standards; Amendments Within the Scope of Previous Waiver of Federal Preemption,'' 46 FR 36742 (July 15, 1981).

[14] *MEMA I,* note 19, at 1121.

[15] *Id.* at 1126.

[16] *Id.* at 1126.

[17] *Id.* at 1122.

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *See, e.g.,* ''California State Motor Vehicle Pollution Control Standards; Waiver of Federal Preemption,'' 40 FR 23102 (May 28, 1975), at 23103.

benefits from reduced emissions is a central policy decision for any regulatory agency under the statutory scheme outlined above, I believe I am required to give very substantial deference to California's judgments on this score.[22]

Similarly, EPA has stated that the text, structure, and history of the California waiver provision clearly indicate both a congressional intent and appropriate EPA practice of leaving the decision on ''ambiguous and controversial matters of public policy'' to California's judgment.[23] This interpretation is supported by relevant discussion in the House Committee Report for the 1977 amendments to the CAA. Congress had the opportunity through the 1977 amendments to restrict the preexisting waiver provision, but elected instead to expand California's flexibility to adopt a complete program of motor vehicle emission controls. The report explains that the amendment is intended to ratify and strengthen the preexisting California waiver provision and to affirm the underlying intent of that provision, that is, to afford California the broadest possible discretion in selecting the best means to protect the health of its citizens and the public welfare.[24]

D. EPA's Administrative Process in Consideration of California's Requests

On November 20, 2014, EPA published a notice of opportunity for public hearing and comment on California's waiver requests (November 20, 2014 Notice). EPA scheduled a public hearing concerning CARB's request for January 14, 2015, and asked for written comments to be submitted by February 16, 2015.[25] EPA's notice of CARB's requests invited public comment on the following: Whether CARB's 2007, 2010, 2012, and 2013 OBD II amendments, individually or collectively assessed, should be considered under the within-the-scope analysis or under the ''full waiver criteria.'' To the extent such amendment(s) should be considered under the within-the-scope criteria, EPA requested comment on whether the amendment(s) ''(1) undermine California's previous determination that its standards, in the aggregate, are at least protective of public health and welfare as comparable Federal standards, (2) affect the consistency of California's requirements with section 202(a) of the Act, and (3) raise any ''new issue'' affecting EPA's previous waiver or authorization determinations.''

To the extent any party believed that the 2007, 2010, 2012, or 2013 OBD II amendments do not merit consideration as within-the-scope of the previous waiver, EPA also requested comment on whether those amendments meet the criteria for a full waiver, specifically ''Whether (a) California's determination that its motor vehicle emission standards are, in the aggregate, at least as protective of public health and welfare as applicable federal standards is arbitrary and capricious, (b) California needs such standards to meet compelling and extraordinary conditions, and (c) California's standards and accompanying enforcement procedures are consistent with section 202(a) of the Clean Air Act.''

As noted above, EPA has previously given notice and taken comments on CARB's requests for within-the-scope determinations related to CARB's 1997 and 2003 OBD II amendments. Thus EPA sought additional comment on any relevant effects the more recent OBD II amendments may have on the prior 1997 and 2003 OBD II amendments. EPA received no comment or evidence suggesting that the more recent OBD II amendments, which are the subject of this waiver, would have any effect on them.

Additionally, EPA received no requests for a public hearing, so EPA did not hold a hearing. EPA received no written comments on the November 20, 2014 Notice. EPA bases its waiver determination on the public record which in this instance consists of the waiver requests dated January 11, 2008, December 15, 2010, and February 12, 2014, and supporting materials submitted by CARB.

III. Discussion

As noted, EPA previously issued CARB a waiver for its OBD II Requirements for light- and medium-duty vehicles in 1996. Since that time EPA has offered an opportunity for public hearing and took public comment on CARB's 1997 and 2003 OBD II Requirements and Enforcement Regulation amendments, and EPA has received three additional waiver requests from CARB relating to its 2007, 2010, 2012, and 2013 OBD II amendments. EPA may evaluate CARB's waiver request under the within-the-scope criteria if three criteria are met, including whether CARB's regulation or amendments raise any new issues. EPA has generally found ''new issues'' to exist if CARB's regulatory amendments include new more stringent standards or require updated emission control technology or other requirements on manufacturers or fleet operators. EPA believes that new issues may also exist when EPA has adopted its own emission standards, for the regulated industry, in the intervening years between when EPA last considered CARB's regulatory program. In this instance, as a result of the significant evolution of CARB's OBD II regulatory program since 1996, the sheer number of amendments—some in part designed to address a variety of manufacturers concerns with the technological feasibility of complying with previous versions of the OBD II regulations, EPA has evaluated these requests under the full waiver criteria.[26] Evaluating the amendments under the criteria for a full waiver has provided EPA and other stakeholders with a full opportunity to explore whether CARB's standards are as protective of public health and welfare, in the aggregate, as applicable federal standards and whether CARB's standards (as amended) are technologically feasible and otherwise consistent with section 202(a). Given that CARB's 2007 and later OBD II amendments significantly modify the OBD II program after the amendments of 1997 and 2003, EPA has considered, and applied the full waiver criteria to, CARB's regulations as of the date of the adoption of the 2007 amendments up through the adoption of the most recent amendments in 2013.

A. California's Protectiveness Determination

Section 209(b)(1)(A) of the Act sets forth the first of the three criteria governing a waiver request—whether California was arbitrary and capricious in its determination that its state standards will be, in the aggregate, at least as protective of public health and welfare as applicable federal standards. Section 209(b)(1)(A) of the CAA requires EPA to deny a waiver if the Administrator finds that California's protectiveness determination was arbitrary and capricious. However, a finding that California's determination was arbitrary and capricious must be based upon clear and convincing evidence that California's finding was unreasonable.[27]

[22] 40 FR 23102, 23103–04 (May 28, 1975).

[23] 40 FR 23102, 23104 (May 28, 1975); 58 FR 4166 (January 13, 1993).

[24] *MEMA I,* 627 F.2d at 1110 (*citing* H.R. Rep. No. 294, 95th Cong., 1st Sess. 301–02 (1977)).

[25] 79 FR 69106 (November 20, 2014).

[26] EPA notes that no comment suggested that the amendments do not meet the criteria for a within-the-scope determination. EPA is making no decision on whether the amendments do or do not meet the criteria for a within-the-scope determination.

[27] *MEMA I,* 627 F.2d at 1122, 1124 (''Once California has come forward with a finding that the procedures it seeks to adopt will not undermine the protectiveness of its standards, parties opposing the waiver request must show that this finding is

CARB made protectiveness determinations in adopting each of the OBD II amendments, and found that the OBD II Requirements and OBD II Enforcement Regulation would not cause California motor vehicle emissions standards, in the aggregate, to be less protective of the public health and welfare than applicable federal standards.[28]

In adopting the initial OBD II Requirements and subsequent amendments thereto in 1989 through 1994, CARB resolved that its standards, in the aggregate, were at least as protective of public health and welfare as the applicable federal standards, including federal OBD standards. In granting the 1996 waiver, the Administrator held that she could not find the CARB's determination was arbitrary and capricious.[29]

CARB maintains that its most recent round of amendments (the 2012 and 2013 Amendments) do not disturb the finding from 1996, even though EPA has since adopted amendments to its federal OBD requirements. ''The 2012 amended OBD II requirements, considered as a whole, continue to be more stringent than the federal OBD regulation for light-duty vehicles and trucks and heavy-duty trucks (under the federal regulation) of the same vehicle weight rating as the California medium-duty vehicle category. The Board affirmed this determination in Resolutions 12–11 and 12–21.'' [30] Likewise, with regard to the 2013 Amendments pertaining to the OBD II requirements set forth in section 1968.2 of the CCR and the OBD II Enforcement Regulation set forth at 1968.5 of the CCR, CARB notes that in the adoption of Resolution 12–29, the Board ''expressly found that the 2013 Amendments to the OBD II Requirements and related enforcement regulations (sections 1968.2 and 1968.5) do not undermine California's previous determinations that its standards are, in the aggregate, at least as protective of the public health and welfare as applicable federal standards.'' [31]

In addition, CARB notes similar protectiveness findings with regard to its 2007 and 2010 amendments. In the context of its 2007 amendments, CARB notes that generally the California OBD II Requirements set forth that components be monitored to indicate malfunctions when component deterioration or failures cause emissions to exceed 1.5 times the applicable tailpipe emission standards and that the regulation also requires components be monitored for functional performance even if the failure of such components does not cause emissions to exceed 1.5 times the applicable standard threshold. In contrast, CARB notes that the federal requirements only require monitoring of the catalyst, engine misfire, evaporative emission control system and oxygen sensors, and that other emission control systems and components need only be monitored if by their malfunctioning the vehicle would exceed 1.5 times the applicable tailpipe standard (thus, not for functional performance). CARB notes ''The amended OBD II requirements, considered as a whole, continue to be more stringent than the federal OBD regulation for light-duty vehicles and trucks and heavy-duty trucks (under the federal regulation) of the same vehicle weight rating as the California medium-duty vehicle category. The Board affirmed this determination in Resolution 12–29.'' [32]

EPA received no comments or evidence suggesting that CARB's protectiveness determination is arbitrary and capricious. In particular, no commenter disputes that California standards, whether looking at the particular California standards analyzed in this proceeding or the entire suite of California standards applicable to light- and medium-duty motor vehicles, are at least as stringent, in the aggregate, as applicable federal standards.

Because no commenters have presented evidence to show that CARB's protectiveness determinations are arbitrary and capricious, and EPA is not otherwise aware of such evidence, EPA cannot find that California's protectiveness determinations are arbitrary and capricious nor deny the waiver requests under this waiver criterion.

B. Whether the Standards Are Necessary To Meet Compelling and Extraordinary Conditions

Section 209(b)(1)(B) instructs EPA not to grant a waiver if the Agency finds that California ''does not need such State standards to meet compelling and extraordinary conditions.'' EPA's inquiry under this second criterion has traditionally been to determine whether California needs its own mobile source pollution program (*i.e.* set of standards) to meet compelling and extraordinary conditions, and not whether the specific standards (*i.e.,* OBD II Requirements and OBD II Enforcement Regulation) that are the subject of the waiver request are necessary to meet such conditions.[33] In recent waiver actions, EPA again examined the language of section 209(b)(1)(B) and reiterated this longstanding traditional interpretation as the better approach for analyzing the need for ''such State standards'' to meet ''compelling and extraordinary conditions.'' [34]

CARB confirmed in Resolutions 06–26 (2007 Amendments), 09–37 (2010 Amendments) and 12–29 (2013 Amendments) that California continues to need its own motor vehicle program to meet serious ongoing air pollution problems.[35] CARB asserted that ''[t]he geographical and climatic conditions and the tremendous growth in vehicle population and use that moved Congress to authorize California to establish vehicle standards in 1967 still exist today. EPA has long confirmed the ARB's judgment, on behalf of the State of California, on this matter . . . and therefore there can be no doubt of the continuing existence of compelling and extraordinary conditions justifying California's need for its own motor vehicle emissions control program.'' [36] CARB also notes that ''[n]othing in these conditions has changed to warrant a change in EPA's confirmation, and therefore there can be no doubt of the continuing existence of compelling and extraordinary conditions justifying California's need for its own motor vehicle emission program.[37]

There has been no evidence submitted to indicate that California's compelling and extraordinary conditions do not continue to exist. California, particularly the South Coast and San Joaquin Valley air basins, continues to experience some of the worst air quality in the nation and continues to be in

unreasonable.''); *see also* 78 FR 2112, at 2121 (Jan. 9, 2013).

[28] *See* CARB Board Resolutions 06–26, 09–37, 12–11, 12–21, and 12–29.

[29] *See* OBD II Waiver Decision Document at 34.

[30] *See* 2014 Waiver Request Support Document at 63.

[31] *Id.* at 55.

[32] *Id.* at 56.

[33] *See* California State Motor Vehicle Pollution Control Standards; Notice of Decision Granting a Waiver of Clean Air Act Preemption for California's 2009 and Subsequent Model Year Greenhouse Gas Emission Standards for New Motor Vehicles,'' 74 FR 32744 (July 8, 2009), at 32761; *see also* ''California State Motor Vehicle Pollution Control Standards; Waiver of Federal Preemption Notice of Decision,'' 49 FR 18887 (May 3, 1984), at 18889–18890.

[34] *See* 78 FR 2112, at 2125–26 (Jan. 9, 2013) (''EPA does not look at whether the specific standards at issue are needed to meet compelling and extraordinary conditions related to that air pollutant.'' *See also* EPA's July 9, 2009 GHG Waiver Decision wherein EPA rejected the suggested interpretation of section 209(b)(1)(B) as requiring a review of the specific need for California's new motor vehicle greenhouse gas emission standards as opposed to the traditional interpretation (need for the program as a whole) applied to local or regional air pollution problems.

[35] 2014 Waiver Request Support Document at 16–17.

[36] *Id.* at 17, 45 (citing 70 FR 50322, 50323 (August 26, 2005), 77 FR 73459, 73461 (December 10, 2012).

[37] *Id.*

non-attainment with national ambient air quality standards for fine particulate matter and ozone.[38] As previously stated, according to California ''nothing in [California's unique geographic and climatic] conditions has changed to warrant a change in this determination.'' [39]

Based on the record before us, EPA is unable to identify any change in circumstances or evidence to suggest that the conditions that Congress identified as giving rise to serious air quality problems in California no longer exist. Therefore, EPA cannot deny the waiver requests based on this waiver prong.

D. Consistency With Section 202(a)

For the third and final criterion, EPA evaluates the OBD II Requirements and OBD II Enforcement Regulation that are subject to this waiver request for consistency with section 202(a) of the CAA. Under section 209(b)(1)(C) of the CAA, EPA must deny California's waiver request if EPA finds that California's standards and accompanying enforcement procedures are not consistent with section 202(a). Section 202(a) requires that regulations ''shall take effect after such period as the Administrator finds necessary to permit the development and application of the relevant technology, considering the cost of compliance within that time.''

EPA has previously stated that the determination is limited to whether those opposed to the waiver have met their burden of establishing that California's standards are technologically infeasible, or that California's test procedures impose requirements inconsistent with the federal test procedure. Infeasibility is shown by demonstrating that there is inadequate lead time, from the time of CARB's adoption, to permit the development of technology necessary to meet the OBD II Requirements and OBD II Enforcement Regulation that are subject to the waiver request, giving appropriate consideration to the cost of compliance within that time.[40] California's accompanying enforcement procedures would also be inconsistent with section 202(a) if the federal and California test procedures conflicted, *i.e.,* if manufacturers would be unable to meet both the California and federal test requirements with the same test vehicle.[41]

EPA has reviewed the information submitted to the record by CARB to determine whether the parties opposing the waiver (no comments opposing the waiver have been submitted) requests have met their burden to demonstrate that the OBD II Requirements and OBD II Enforcement Regulation subject to the waiver requests are not consistent with section 202(a). Regarding potential test procedure conflict, as CARB notes, there is no issue of test procedure inconsistency because the federal regulations provide that manufacturers of engines and vehicles certified to California's OBD II Requirements are allowed to demonstrate compliance with the federal standards due to the ''deemed to comply'' provisions of EPA's standards.[42] EPA has received no adverse comment or evidence of test procedure inconsistency. Therefore, EPA cannot deny the waiver on the grounds of test procedure inconsistency.

EPA did not receive comments arguing that the OBD II Requirements and OBD II Enforcement Regulation were infeasible when reviewed purely as a matter of technology or cost.

In the context of CARB's 2007 amendments, CARB notes that ''[a]s set forth in detail in the ISORs [Initial Statement of Reasons] and the Final Statement of Reasons for the 2003 and 2007 amendments . . ., and in the ISOR and Final Statement of Reasons for the HD OBD rule . . ., CARB has identified specific technologies for near-term implementation dates for the amended monitoring requirements as they apply to gasoline and diesel light- and medium-duty vehicles. Consistent with EPA's continuum analysis for determining technical feasibility, all monitoring requirements that manufacturers are required to implement in the near term have been required since adoption of the 2003 amendments and sufficient lead time has been provided. Among other things, the amendments have provided additional lead time and phase-in schedules for several gasoline engine monitors (*e.g.,* catalyst monitoring) and nearly all diesel engine monitors and have relaxed requirements for other monitors (*e.g.* secondary air system, monitoring on gasoline vehicles).'' [43] CARB also notes the 2007 amendments specifically address concerns that were raised about the feasibility of the 2003 OBD II amendments as applied to light- and medium duty diesel vehicles beginning in model year 2004, including by providing higher interim malfunction thresholds through the 2012 model year for both light- and medium-duty vehicles and permanent malfunction thresholds for medium-duty diesel engines starting with the 2013 model year.[44]

As previously explained, in the context of the November 20, 2014 Notice, EPA requested and received no comments stating that the 2003 OBD amendments when read together with the 2007 OBD amendments create requirements that are technologically infeasible. As noted above, CARB has provided additional lead time and phase-in schedules for several of their gasoline engine monitors (*e.g.,* catalyst monitoring) requirements, and nearly all of CARB's diesel engine monitors requirements, and they have relaxed requirements for other monitors (*e.g.* secondary air system) on gasoline vehicles.

CARB also addresses the technological feasibility of the new monitoring requirements associated with the 2007 amendments. CARB states and EPA agrees that most of the 2012 and 2013 amendments either relax or clarify existing provisions and therefore, largely provide additional compliance flexibility to the regulated industry. For example, CARB identified the use of front and rear oxygen sensor signals in order for manufacturers to monitor air-fuel ratios, and provided manufacturers with approximately five years of lead time and a phase-in of the requirement for most vehicles between the 2011 and 2013 model years, along with the use of a higher interim threshold during the phase-in period. CARB also identified similar compliance flexibilities for diesel vehicles starting with the 2007 model year and based on CARB's HD OBD regulatory experience.[45] CARB makes similar arguments with regards to its 2010 and later amendments. EPA also did not receive any comments arguing that the new monitoring requirements contained in the 2007 Amendments, and the additional requirements found in the 2010, 2012, and 2013 OBD Amendments were technologically infeasible or that the cost of compliance would be excessive, such that California's standards might be inconsistent with section 202(a).[46] In EPA's review of the 2007, 2010, 2012 and 2013 OBD Amendments, we likewise cannot identify any requirements that appear technologically infeasible or excessively expensive for manufacturers to

[38] 74 FR 32744, 32762–63 (July 8, 2009).

[39] 74 FR 32744, 32762 (July 8, 2009); 76 FR 77515, 77518 (December 13, 2011).

[40] *See, e.g.,* 38 FR 30136 (November 1, 1973) and 40 FR 30311 (July 18, 1975).

[41] *See, e.g.,* 43 FR 32182 (July 25, 1978).

[42] *See* 40 CFR 1806–05(j).

[43] 2007 Waiver Support Document at 33.

[44] *Id.* at 33–34.

[45] *Id.*

[46] *See, e.g.,* 78 FR 2134 (Jan. 9, 2013), 47 FR 7306, 7309 (Feb. 18, 1982), 43 FR 25735 (Jun. 17, 1978), and 46 FR 26371, 26373 (May 12, 1981).

implement within the timeframes provided by California at the time of adoption of the amendments. EPA therefore cannot find that the OBD II Requirements and OBD II Enforcement Regulations do not provide adequate lead time or are otherwise not technically feasible. In summary, no evidence is in the record to show that the OBD II Requirements and OBD II Enforcement Regulation are technologically infeasible, considering costs of compliance. Indeed, such a finding is particularly unlikely where CARB has continued to delay and phase-in the monitoring requirements and in some instances adjust the malfunction thresholds to be less burdensome. As such, the record does not support a finding that the OBD II Requirements and OBD II Enforcement Regulation are inconsistent with Section 202(a).

IV. Decision

The Administrator has delegated the authority to grant California section 209(b) waivers to the Assistant Administrator for Air and Radiation. After evaluating CARB's amendments to the OBD II Requirements and OBD II Enforcement Regulation described above and CARB's submissions for EPA review, EPA is hereby granting a waiver for California's 2007, 2010, 2012, and 2013 amendments to its OBD II Requirements and OBD II Enforcement Regulation.

This decision will affect not only persons in California, but also manufacturers nationwide who must comply with California's requirements. In addition, because other states may adopt California's standards for which a section 209(b) waiver has been granted under section 177 of the Act if certain criteria are met, this decision would also affect those states and those persons in such states. For these reasons, EPA determines and finds that this is a final action of national applicability, and also a final action of nationwide scope or effect for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed by January 6, 2017. Judicial review of this final action may not be obtained in subsequent enforcement proceedings, pursuant to section 307(b)(2) of the Act.

V. Statutory and Executive Order Reviews

As with past waiver decisions, this action is not a rule as defined by Executive Order 12866. Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12866.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Further, the Congressional Review Act, 5 U.S.C. 801, *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule for purposes of 5 U.S.C. 804(3).

Dated: October 24, 2016.

Janet McCabe,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 2016–26861 Filed 11–4–16; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2014–0699; FRL–9954–95–OAR]

California State Motor Vehicle Pollution Control Standards; Malfunction and Diagnostic System Requirements for 2010 and Subsequent Model Year Heavy-Duty Engines; Notice of Decision

AGENCY: Environmental Protection Agency.

ACTION: Notice of decision.

SUMMARY: The Environmental Protection Agency (EPA) is granting the California Air Resources Board's (CARB's) request for a waiver of Clean Air Act preemption for amendments made in 2013 (''2013 HD OBD Amendments'') to its Malfunction and Diagnostic System Requirements for 2010 and Subsequent Model Year Heavy-Duty Engine (HD OBD Requirements) and to its Enforcement of Malfunction and Diagnostic System Requirements for 2010 and Subsequent Model-Year Heavy-Duty Engines (''HD OBD Enforcement Regulation''), collectively referred to herein as HD OBD Regulations. EPA also confirms that certain of the 2013 HD OBD Amendments are within the scope of the previous waiver for the HD OBD Requirements and HD OBD Enforcement Regulation. This decision is issued under the authority of the Clean Air Act (''CAA'' or ''the Act'').

DATES: Petitions for review must be filed by January 6, 2017.

ADDRESSES: EPA has established a docket for this action under Docket ID EPA–HQ–OAR–2014–0699. All documents relied upon in making this decision, including those submitted to EPA by CARB, are contained in the public docket. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air and Radiation Docket in the EPA Headquarters Library, EPA West Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The Public Reading Room is open to the public on all federal government working days from 8:30 a.m. to 4:30 p.m.; generally, it is open Monday through Friday, excluding holidays. The telephone number for the Reading Room is (202) 566–1744. The Air and Radiation Docket and Information Center's Web site is *http://www.epa.gov/oar/docket.html.* The email address for the Air and Radiation Docket is: *a-and-r-docket@epa.gov,* the telephone number is (202) 566–1742, and the fax number is (202) 566–9744. An electronic version of the public docket is available through the federal government's electronic public docket and comment system at *http://www.regulations.gov.* After opening the *www.regulations.gov* Web site, enter EPA–HQ–OAR–2014–0699 in the ''Enter Keyword or ID'' fill-in box to view documents in the record. Although a part of the official docket, the public docket does not include Confidential Business Information (''CBI'') or other information whose disclosure is restricted by statute.

EPA's Office of Transportation and Air Quality (''OTAQ'') maintains a Web page that contains general information on its review of California waiver and authorization requests. Included on that page are links to prior waiver **Federal Register** notices, some of which are cited in today's notice; the page can be accessed at *http://www.epa.gov/otaq/cafr.htm.*

FOR FURTHER INFORMATION CONTACT: David Dickinson, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW. Telephone: (202) 343–9256. Email: *dickinson.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

CARB initially adopted the HD OBD Requirements in December 2005. The HD OBD Requirements require manufacturers to install compliant HD OBD systems with diesel and gasoline powered engines used in vehicles

having a gross vehicle weight rating greater than 14,000 pounds. HD OBD systems monitor emission-related components and systems for proper operation and for deterioration or malfunctions that cause emissions to exceed specific thresholds.

EPA issued a waiver under section 209(b) of the CAA for the 2005 HD OBD Requirements in 2008.[1] CARB subsequently updated the HD OBD Requirements to align the HD OBD Requirements with OBD II Requirements for medium-duty vehicles, and adopted the HD OBD Enforcement Regulation, in 2010. EPA issued California a waiver for the 2010 HD OBD Regulations in December 2012.[2] CARB subsequently amended the HD OBD Regulations again in 2013. CARB formally adopted the 2013 HD OBD Amendments on June 26, 2013, and they became operative under state law on July 31, 2013. The HD OBD Requirements are codified at title 13, California Code of Regulations, section 1971.1. The HD OBD Enforcement Regulation is codified at title 13, California Code of Regulations, section 1971.5.

By letter dated February 12, 2014,[3] CARB submitted to EPA a request for a determination that the 2013 HD OBD Amendments are within the scope of the previous HD OBD waiver or, alternatively, that EPA grant California a waiver of preemption for the 2013 HD OBD Amendments.

CARB's February 12, 2014 submission provides analysis and evidence to support its finding that the 2013 HD OBD Amendments satisfy the CAA section 209(b) criteria and that a waiver of preemption should be granted. CARB briefly summarizes the 2013 HD OBD Amendments as accomplishing the following primary purposes:

''accelerate the start date for OBD system implementation on alternate-fueled engines from the 2020 model year to the 2018 model year, relax some requirements for OBD systems on heavy-duty hybrid vehicles for the 2013 through 2015 model years, relax malfunction thresholds for three major emission control systems (particulate matter (PM) filters, oxides of nitrogen (NO_x) catalysts, and NO_x sensors) on diesel engines until the 2016 model year, delay monitoring requirements for some diesel-related components until 2015 to provide further lead time for emission control strategies to stabilize, and clarify requirements for several monitors and standardization.''[4]

The 2013 HD OBD Amendments include several dozen amendments overall.[5]

II. Principles Governing this Review

A. Scope of Review

Section 209(a) of the CAA provides:

''No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part. No State shall require certification, inspection or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.''[6]

Section 209(b)(1) of the Act requires the Administrator, after an opportunity for public hearing, to waive application of the prohibitions of section 209(a) for any state that has adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966, if the state determines that its state standards will be, in the aggregate, at least as protective of public health and welfare as applicable federal standards.[7] However, no such waiver shall be granted if the Administrator finds that: (A) The protectiveness determination of the state is arbitrary and capricious; (B) the state does not need such state standards to meet compelling and extraordinary conditions; or (C) such state standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act.[8]

Key principles governing this review are that EPA should limit its inquiry to the specific findings identified in section 209(b)(1) of the Clean Air Act, and that EPA will give substantial deference to the policy judgments California has made in adopting its regulations. In previous waiver decisions, EPA has stated that Congress intended the Agency's review of California's decision-making to be narrow. EPA has rejected arguments that are not specified in the statute as grounds for denying a waiver:

''The law makes it clear that the waiver requests cannot be denied unless the specific findings designated in the statute can properly be made. The issue of whether a proposed California requirement is likely to result in only marginal improvement in California air quality not commensurate with its costs or is otherwise an arguably unwise exercise of regulatory power is not legally pertinent to my decision under section 209, so long as the California requirement is consistent with section 202(a) and is more stringent than applicable Federal requirements in the sense that it may result in some further reduction in air pollution in California.''[9]

This principle of narrow EPA review has been upheld by the U.S. Court of Appeals for the District of Columbia Circuit.[10] Thus, EPA's consideration of all the evidence submitted concerning a waiver decision is circumscribed by its relevance to those questions that may be considered under section 209(b)(1).

B. Burden and Standard of Proof

As the U.S. Court of Appeals for the D.C. Circuit has made clear in *MEMA I,* opponents of a waiver request by California bear the burden of showing that the statutory criteria for a denial of the request have been met:

''[T]he language of the statute and its legislative history indicate that California's regulations, and California's determinations that they must comply with the statute, when presented to the Administrator are presumed to satisfy the waiver requirements and that the burden of proving otherwise is on whoever attacks them. California must present its regulations and findings at the hearing and thereafter the parties opposing the waiver request bear the burden of persuading the Administrator that the waiver request should be denied.''[11]

The Administrator's burden, on the other hand, is to make a reasonable evaluation of the information in the record in coming to the waiver decision. As the court in *MEMA I* stated: ''here, too, if the Administrator ignores evidence demonstrating that the waiver should not be granted, or if he seeks to overcome that evidence with unsupported assumptions of his own, he runs the risk of having his waiver

[1] 73 FR 52042 (September 8, 2008).

[2] 77 FR 73459 (December 10, 2012).

[3] CARB, ''Request for Waiver Action Pursuant to Clean Air Act Section 209(b) for California's Heavy-Duty Engine On-Board Diagnostic System Requirements (HD OBD) and On-Board Diagnostic System Requirements for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles and Engines (OBD II),'' February 12, 2014 (''California Waiver Request Support Document'') *See www.regulations.gov* Web site, docket number EPA–HQ–OAR–2014–0699–0003.

[4] California Waiver Request Support Document, at 11–12.

[5] The many 2013 HD OBD Amendments are individually summarized by CARB in the California Waiver Request Support Document, from pages 11–39.

[6] CAA section 209(a). 42 U.S.C. 7543(a).

[7] CAA section 209(b)(1). 42 U.S.C. 7543(b)(1). California is the only state that meets section 209(b)(1)'s requirement for obtaining a waiver. *See* S. Rep. No. 90–403 at 632 (1967).

[8] CAA section 209(b)(1). 42 U.S.C. 7543(b)(1).

[9] ''Waiver of Application of Clean Air Act to California State Standards,'' 36 FR 17458 (Aug. 31, 1971). Note that the more stringent standard expressed here, in 1971, was superseded by the 1977 amendments to section 209, which established that California must determine that its standards are, in the aggregate, at least as protective of public health and welfare as applicable federal standards.

[10] *See, e.g., Motor and Equip. Mfrs Assoc.* v. *EPA,* 627 F.2d 1095 (D.C. Cir. 1979) (''*MEMA I*'').

[11] *MEMA I,* note 19, at 1121.

decision set aside as 'arbitrary and capricious.'' '[12] Therefore, the Administrator's burden is to act ''reasonably.''[13]

With regard to the standard of proof, the court in *MEMA I* explained that the Administrator's role in a section 209 proceeding is to:

> ''[. . .]consider all evidence that passes the threshold test of materiality and . . . thereafter assess such material evidence against a standard of proof to determine whether the parties favoring a denial of the waiver have shown that the factual circumstances exist in which Congress intended a denial of the waiver.''[14]

In that decision, the court considered the standards of proof under section 209 for the two findings related to granting a waiver for an ''accompanying enforcement procedure.'' Those findings involve: (1) Whether the enforcement procedures impact California's prior protectiveness determination for the associated standards, and (2) whether the procedures are consistent with section 202(a). The principles set forth by the court are similarly applicable to an EPA review of a request for a waiver of preemption for a standard. The court instructed that ''the standard of proof must take account of the nature of the risk of error involved in any given decision, and it therefore varies with the finding involved. We need not decide how this standard operates in every waiver decision.''[15]

With regard to the protectiveness finding, the court upheld the Administrator's position that, to deny a waiver, there must be ''clear and compelling evidence'' to show that proposed enforcement procedures undermine the protectiveness of California's standards.[16] The court noted that this standard of proof also accords with the congressional intent to provide California with the broadest possible discretion in setting regulations it finds protective of the public health and welfare.[17]

With respect to the consistency finding, the court did not articulate a standard of proof applicable to all proceedings, but found that the opponents of the waiver were unable to meet their burden of proof even if the standard were a mere preponderance of the evidence. Although *MEMA I* did not explicitly consider the standards of proof under section 209 concerning a waiver request for ''standards,'' as compared to a waiver request for accompanying enforcement procedures, there is nothing in the opinion to suggest that the court's analysis would not apply with equal force to such determinations. EPA's past waiver decisions have consistently made clear that: ''[E]ven in the two areas concededly reserved for Federal judgment by this legislation—the existence of 'compelling and extraordinary' conditions and whether the standards are technologically feasible—Congress intended that the standards of EPA review of the State decision to be a narrow one.''[18]

C. Deference to California

In previous waiver decisions, EPA has recognized that the intent of Congress in creating a limited review based on specifically listed criteria was to ensure that the federal government did not second-guess state policy choices. As the Agency explained in one prior waiver decision:

> ''It is worth noting . . . I would feel constrained to approve a California approach to the problem which I might also feel unable to adopt at the federal level in my own capacity as a regulator.. . . Since a balancing of risks and costs against the potential benefits from reduced emissions is a central policy decision for any regulatory agency under the statutory scheme outlined above, I believe I am required to give very substantial deference to California's judgments on this score.''[19]

Similarly, EPA has stated that the text, structure, and history of the California waiver provision clearly indicate both a congressional intent and appropriate EPA practice of leaving the decision on ''ambiguous and controversial matters of public policy'' to California's judgment.[20] This interpretation is supported by relevant discussion in the House Committee Report for the 1977 amendments to the CAA. Congress had the opportunity through the 1977 amendments to restrict the preexisting waiver provision, but elected instead to expand California's flexibility to adopt a complete program of motor vehicle emission controls. The report explains that the amendment is intended to ratify and strengthen the preexisting California waiver provision and to affirm the underlying intent of that provision, that is, to afford California the broadest possible discretion in selecting the best means to protect the health of its citizens and the public welfare.[21]

D. EPA's Administrative Process in Consideration of California's Request

On November 20, 2014, EPA published a notice of opportunity for public hearing and comment on California's waiver request. In that notice, EPA requested comments on whether the 2013 HD OBD Amendments should be considered under the within-the-scope analysis or whether they should be considered under the full waiver criteria, and on whether the 2013 HD OBD Amendments meet the criteria for a full waiver.[22] EPA additionally provided an opportunity for any individual to request a public hearing.

EPA received no comments and no requests for a public hearing. Consequently, EPA did not hold a public hearing.

III. Discussion

A. Within-the-Scope Determination

CARB proposes that certain of the 2013 HD OBD Amendments meet all three within-the-scope criteria, *i.e.* that the amendments: (1) Do not undermine California's previous protectiveness determination that its standards, in the aggregate, are at least as protective of public health and welfare as comparable federal standards; (2) do not affect the consistency of California's requirements with section 202(a) of the Act, and (3) do not raise any new issue affecting the prior waiver. CARB identifies the amendments it considers to be within the scope of the prior waiver in Attachments 2, 3, and 4 of the California Waiver Request Support Document.[23] CARB does acknowledge that a number of the 2013 HD OBD Amendments potentially establish new or more stringent requirements, and thus will need a new waiver.[24] These were identified by CARB in Attachments 1 and 4 of its Waiver Request Support Document.[25] EPA must also assess

[12] *Id.* at 1126.

[13] *Id.* at 1126.

[14] *Id.* at 1122.

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *See, e.g.,* ''California State Motor Vehicle Pollution Control Standards; Waiver of Federal Preemption,'' 40 FR 23102 (May 28, 1975), at 23103.

[19] 40 FR 23102, 23103–04 (May 28, 1975).

[20] 40 FR 23102, 23104 (May 28, 1975); 58 FR 4166 (January 13, 1993).

[21] *MEMA I,* 627 F.2d at 1110 (*citing* H.R. Rep. No. 294, 95th Cong., 1st Sess. 301–02 (1977)).

[22] 79 FR 69104 (November 20, 2014).

[23] *See* California Waiver Request Support Document [EPA–HQ–OAR–2014–0699–0003], at Attachment 2 (''2013 Amendments to HD OBD and OBD II Requirements That Relax Existing Requirements''), at Attachment 3 (''2013 Amendments to HD OBD and OBD II Requirements That Clarify Existing Requirements''), and at Attachment 4 (the portion identified as ''Amendments that Relax of Clarify Existing Requirements'').

[24] *See* California Waiver Request Support Document [EPA–HQ–OAR–2014–0699–0003], at 42–43.

[25] *See* Attachment 1 (''2013 Amendments to HD OBD and OBD II Requirements That Potentially Establish New or More Stringent Requirements'') of

Continued

whether the HD OBD Amendments that have been identified by CARB as requirements within the scope of the prior waiver can be confirmed by EPA to not need a new waiver. If EPA determines that the amendments do not meet the requirements for a within-the-scope confirmation, we will then consider whether the amendments satisfy the criteria for full waiver.

As described previously, EPA specifically invited comment on whether the 2013 HD OBD Amendments are within the scope of the prior waiver. We received no comments disputing CARB's contentions on this issue.

With regard to the first of the within-the-scope criteria, CARB notes its finding in Resolution 12–29 that the 2013 HD OBD Amendments do not undermine California's previous protectiveness determination that its standards, in the aggregate, are at least as protective of public health and welfare as comparable federal standards.[26] CARB maintains that its HD OBD Regulations are more stringent than comparable federal regulations.[27] As there are no comments and EPA is not aware of evidence to the contrary, EPA finds that the 2013 HD OBD Amendments do not undermine the previous protectiveness determination made with regard to California's HD OBD Requirements and HD OBD Enforcement Regulation.

With regard to the second within-the-scope prong (affecting consistency with section 202(a) of the Act), CARB argues that the 2013 HD OBD Amendments listed in Attachments 2, 3 and 4 as relaxing or clarifying existing requirements do not affect the consistency of California's requirements with section 202(a) of the Act. For these amendments, CARB states that there is sufficient lead time to permit the development of technology necessary to meet the standards, giving appropriate consideration to the cost of compliance, since the amendments merely relax or clarify existing standards, and that manufacturers can still meet both the state and federal test requirements with one test vehicle or engine.[28] California contends that the 2013 HD OBD Amendments (other than those specifically listed in Attachments 1 and 4 as being otherwise) do not create new or more stringent requirements.[29] In addition, regarding the third within-the-scope prong, CARB argues that the 2013 HD OBD Amendments (other than those identified in Attachments 1 and 4 as establishing new or more stringent standards) do not raise any new issue affecting the prior waiver.[30]

Despite CARB's contentions on the second and third within-the-scope prongs, it was self-evident in EPA's review of the record that some of the amendments identified by CARB as being within the scope of the prior waiver instead require a new waiver because the amendments raise new issues regarding the waiver and may affect the consistency of California's requirements with section 202(a) of the Act. As stated in the background section, while the burden of proof rests with opponents of a waiver request (and there were none in this case), EPA retains the burden ''to make a reasonable evaluation of the information in the record'' before it. In evaluating the record, it is clear that some of the 2013 HD OBD Amendments listed by CARB as clarifying or relaxing existing requirements arguably provide new or more stringent requirements that must be met by manufacturers. Specifically, in addition to the amendments listed by CARB in Attachment 1 to its Waiver Request Support Document, EPA notes that the following additional 2013 HD OBD Amendments also provide new or more stringent requirements and thus require a new waiver:

[In the order presented in the Waiver Request Support Document, Attachment 2]

Section 1971.1(d)(4.3.2)(E): Denominator Specifications [providing new criteria to increment the denominator]

Section 1971.1(d)(4.3.2)(J): Denominator Specifications for Hybrid Vehicles [providing new criteria to increment the denominator for hybrid vehicles]

Section 1971.1(e)(8.2.4): NMHC Conversion Monitoring [requiring monitoring of capability to generate desired feed gas]

Section 1971.1(e)(9.2.2)(A): NO_x and PM Sensor Malfunction Criteria [requiring fault before emissions are twice the NMHC standard]

Section 1971.1(e)(9.3.1): NO_x and PM Sensor Monitoring Conditions [requiring track and report of ''monitoring capability'' monitors]

Section 1971.1(g)(3.2.2)(B)(ii)d: Diesel Idle Control System Monitoring [requiring manufacturer to consider known, not given, operating conditions]

[In the order presented in the Waiver Request Support Document, Attachment 3]

Section 1971.1(c): ''Alternate-fueled engine'' [new scope of exempted vehicles]

Section 1971.1(c): ''Ignition Cycle'' and ''Propulsion System Active'' [new specific requirements for hybrid vehicles]

Section 1971.1(d)(2.3.1)(A) and (2.3.2)(A): MIL Extinguishing and Fault Code Erasure Protocol [requiring MIL to be extinguished after three driving cycles]

Section 1971.1(d)(2.3.1)(C)(ii)(b).3 and (2.3.2)(D)(ii)b.3: Erasing a Permanent Fault Code [requiring erasure of fault code if not detected again for 40 warm-up cycles]

Section 1971.1(d)(5.5.2)(B): Ignition Cycle Counter [requiring counter to be incremented when hybrid vehicle propulsion system is active for minimum time period]

Section 1971.1(f)(7.1): Evaporative System Monitoring [requiring evaporative system monitoring for alternative-fueled engines]

Section 1971.1(h)(3.2): SAE J1939 Communication Protocol [prohibiting use of 250 kbps baud rate version for 2016 model year]

Section 1971.1(h)(4.1): Readiness status [removing exceptions allowing readiness status to say ''complete'' under certain conditions without completion of monitoring]

Section 1971.1(h)(4.2.2) and (h)(4.2.3)(E): Data Stream [requiring additional information in data stream]

Section 1971.1(h)(4.5.5): Test Results when Fault Memory Cleared [requiring report of non-zero values corresponding to ''test not complete'']

Section 1971.1(i)(3.1.2): Diesel Misfire Monitor [requiring continuous misfire monitoring for diesel engines and demonstration testing for the misfire monitor]

Section 1971.1(i)(3.2.1): Gasoline Fuel System [requiring demonstration testing of air-fuel cylinder imbalance monitor]

[In the order presented in the Waiver Request Support Document, Attachment 4]

Section 1971.5(d)(3)(A)(iii) [adding mandatory recall criteria for diesel misfire monitors]

Section 1971.5(d)(3)(A)(vi) [adding mandatory recall criteria for PM filter monitors]

The amendments listed above combined with those listed in Attachment 1 to Waiver Request

the California Waiver Request Support Document [EPA–HQ–OAR–2014–0699–0003, at 72–73], and Attachment 4 (the portion identified as ''Amendments that Establish New or More Stringent Requirements'').

[26] *See* California Waiver Request Support Document [EPA–HQ–OAR–2014–0699–0003], at 43, 51, and Attachment 14 (CARB Resolution 12–29, dated August 23, 2012).

[27] *Id.*

[28] *See* California Waiver Request Support Document [EPA–HQ–OAR–2014–0699–0003], at 45–46, 51–52.

[29] *See* California Waiver Request Support Document [EPA–HQ–OAR–2014–0699–0003], at 50–54.

[30] *Id.*

Support Document will hereafter be referred to as 2013 HD OBD New or Stricter Requirements. For the remaining 2013 HD OBD Amendments that are not listed above (*i.e.,* the ''Relaxed 2013 HD OBD Requirements''), no evidence or comment was received indicating that the Relaxed 2013 HD OBD Requirements are not within the scope of the prior waiver, nor was there anything self-evident from the record indicating otherwise. Therefore, EPA cannot find that the Relaxed 2013 HD OBD Requirements either affect the consistency of California's requirements with section 202(a) of the Act or raise a new issue affecting the prior waiver. California has thus met the within-the-scope criteria, and EPA confirms that the Relaxed 2013 HD OBD Requirements are within the scope of the previous waiver of the HD OBD Requirements and HD OBD Enforcement Regulation.

B. New Waiver Determination

a. *Whether California's Protectiveness Determination was Arbitrary and Capricious*

As stated in the background, section 209(b)(1)(A) of the Act sets forth the first of the three criteria governing a new waiver request—whether California was arbitrary and capricious in its determination that its state standards will be, in the aggregate, at least as protective of public health and welfare as applicable federal standards. Section 209(b)(1)(A) of the CAA requires EPA to deny a waiver if the Administrator finds that California's protectiveness determination was arbitrary and capricious. However, a finding that California's determination was arbitrary and capricious must be based upon clear and convincing evidence that California's finding was unreasonable.[31]

CARB did make a protectiveness determination in adopting the 2013 HD OBD Amendments, and found that the 2013 HD OBD Amendments would not cause California motor vehicle emissions standards, in the aggregate, to be less protective of the public health and welfare than applicable federal standards.[32] EPA received no comments or EPA is not otherwise aware of evidence suggesting that CARB's protectiveness determination was unreasonable.

As it is clear that California's standards are at least as protective of public health and welfare as applicable federal standards, and that the 2013 HD OBD New or Stricter Requirements make California's standards even more protective, EPA finds that California's protectiveness determination is not arbitrary and capricious.

b. *Whether the Standards Are Necessary To Meet Compelling and Extraordinary Conditions*

Section 209(b)(1)(B) instructs that EPA cannot grant a waiver if the Agency finds that California ''does not need such State standards to meet compelling and extraordinary conditions.'' EPA's inquiry under this second criterion has traditionally been to determine whether California needs its own motor vehicle emission control program (*i.e.* set of standards) to meet compelling and extraordinary conditions, and not whether the specific standards (the 2013 HD OBD New or Stricter Requirements) that are the subject of the waiver request are necessary to meet such conditions.[33] In recent waiver actions, EPA again examined the language of section 209(b)(1)(B) and reiterated this longstanding traditional interpretation as the better approach for analyzing the need for ''such State standards'' to meet ''compelling and extraordinary conditions.''[34]

In conjunction with the 2013 HD OBD Amendments, CARB determined in Resolution 12–29 that California continues to need its own motor vehicle program to meet serious ongoing air pollution problems.[35] CARB asserted that ''[t]he geographical and climatic conditions and the tremendous growth in vehicle population and use that moved Congress to authorize California to establish vehicle standards in 1967 still exist today . . . and therefore there can be no doubt of the continuing existence of compelling and extraordinary conditions justifying California's need for its own motor vehicle emissions control program.''[36]

There has been no evidence submitted to indicate that California's compelling and extraordinary conditions do not continue to exist. California, particularly in the South Coast and San Joaquin Valley air basins, continues to experience some of the worst air quality in the nation, and many areas in California continue to be in non-attainment with national ambient air quality standards for fine particulate matter and ozone.[37] As California has previously stated, ''nothing in [California's unique geographic and climatic] conditions has changed to warrant a change in this determination.''[38]

Based on the record before us, EPA is unable to identify any change in circumstances or evidence to suggest that the conditions that Congress identified as giving rise to serious air quality problems in California no longer exist. Therefore, EPA cannot find that California does not need its state standards to meet compelling and extraordinary conditions in California.

c. Consistency With Section 202(a)

For the third and final criterion, EPA evaluates the program for consistency with section 202(a) of the CAA. Under section 209(b)(1)(C) of the CAA, EPA must deny California's waiver request if EPA finds that California's standards and accompanying enforcement procedures are not consistent with section 202(a). Section 202(a) requires that regulations ''shall take effect after such period as the Administrator finds necessary to permit the development and application of the relevant technology, considering the cost of compliance within that time.''

EPA has previously stated that the determination is limited to whether those opposed to the waiver have met their burden of establishing that California's standards are technologically infeasible, or that California's test procedures impose requirements inconsistent with the federal test procedure. Infeasibility would be shown here by demonstrating

[31] *MEMA I,* 627 F.2d at 1122, 1124 (''Once California has come forward with a finding that the procedures it seeks to adopt will not undermine the protectiveness of its standards, parties opposing the waiver request must show that this finding is unreasonable.''); *see also* 78 FR 2112, at 2121 (Jan. 9, 2013).

[32] California Waiver Request Support Document [EPA–HQ–OAR–2014–0699–0003], at 43, 51, and Attachment 14 (CARB Resolution 12–29, dated August 23, 2012).

[33] *See* California State Motor Vehicle Pollution Control Standards; Notice of Decision Granting a Waiver of Clean Air Act Preemption for California's 2009 and Subsequent Model Year Greenhouse Gas Emission Standards for New Motor Vehicles,'' 74 FR 32744 (July 8, 2009), at 32761; *see also* ''California State Motor Vehicle Pollution Control Standards; Waiver of Federal Preemption Notice of Decision,'' 49 FR 18887 (May 3, 1984), at 18889–18890.

[34] *See* 78 FR 2112, at 2125–26 (Jan. 9, 2013) (''EPA does not look at whether the specific standards at issue are needed to meet compelling and extraordinary conditions related to that air pollutant.'' ; *see also* EPA's July 9, 2009 GHG Waiver Decision wherein EPA rejected the suggested interpretation of section 209(b)(1)(B) as requiring a review of the specific need for California's new motor vehicle greenhouse gas emission standards as opposed to the traditional interpretation (need for the motor vehicle emission program as a whole) applied to local or regional air pollution problems.

[35] California Waiver Request Support Document, at 44 and Attachment 14 (Resolution 12–29, dated August 23, 2012).

[36] California Waiver Request Support Document, at 45.

[37] 74 FR 32744, 32762–63 (July 8, 2009).

[38] 74 FR 32744, 32762 (July 8, 2009); 76 FR 77515, 77518 (December 13, 2011).

that there is inadequate lead time to permit the development of technology necessary to meet the 2013 HD OBD New or Stricter Requirements that are subject to the waiver request, giving appropriate consideration to the cost of compliance within that time.[39] California's accompanying enforcement procedures would also be inconsistent with section 202(a) if the federal and California test procedures conflicted, *i.e.,* if manufacturers would be unable to meet both the California and federal test requirements with the same test vehicle.[40]

Regarding test procedure conflict, CARB notes that there is no issue of test procedure inconsistency because federal regulations provide that engines certified to California's HD OBD regulation are deemed to comply with federal standards. EPA has received no adverse comment or evidence of test procedure inconsistency. We therefore cannot find that the 2013 HD OBD New or Stricter Requirements are inconsistent with federal test procedures.

EPA also did not receive any comments arguing that the 2013 HD OBD Amendments were technologically infeasible or that the cost of compliance would be excessive, such that California's standards might be inconsistent with section 202(a).[41] In EPA's review of the 2013 HD OBD New or Stricter Requirements, we likewise cannot identify any requirements that appear technologically infeasible or excessively expensive for manufacturers to implement within the timeframes provided. EPA therefore cannot find that the 2013 HD OBD New or Stricter Requirements do not provide adequate lead time or are otherwise not technically feasible.

We therefore cannot find that the 2013 HD OBD New or Stricter Requirements that we analyzed under the waiver criteria are inconsistent with section 202(a).

Having found that the 2013 HD OBD New or Stricter Requirements satisfy each of the criteria for a waiver, and having received no evidence to contradict this finding, we cannot deny a waiver for the amendments.

IV. Decision

The Administrator has delegated the authority to grant California section 209(b) waivers to the Assistant Administrator for Air and Radiation. After evaluating CARB's 2013 HD OBD Amendments and CARB's submissions for EPA review, EPA is hereby confirming that the 2013 HD OBD Amendments, with the exception of the 2013 HD OBD New or Stricter Requirements identified above, are within the scope of EPA's previous waivers for the HD OBD Requirements and HD OBD Enforcement Regulation. In addition, EPA is hereby granting a waiver for the 2013 HD OBD New or Stricter Requirements.

This decision will affect persons in California and those manufacturers and/or owners/operators nationwide who must comply with California's requirements. In addition, because other states may adopt California's standards for which a section 209(b) waiver has been granted under section 177 of the Act if certain criteria are met, this decision would also affect those states and those persons in such states. For these reasons, EPA determines and finds that this is a final action of national applicability, and also a final action of nationwide scope or effect for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed by January 6, 2017. Judicial review of this final action may not be obtained in subsequent enforcement proceedings, pursuant to section 307(b)(2) of the Act.

V. Statutory and Executive Order Reviews

As with past waiver and authorization decisions, this action is not a rule as defined by Executive Order 12866. Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12866.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Further, the Congressional Review Act, 5 U.S.C. 801, *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule for purposes of 5 U.S.C. 804(3).

Dated: October 24, 2016.

Janet G. McCabe,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 2016–26865 Filed 11–4–16; 8:45 am]

BILLING CODE 6560–50–P

[39] *See, e.g.,* 38 F.R 30136 (November 1, 1973) and 40 FR 30311 (July 18, 1975).

[40] *See, e.g.,* 43 FR 32182 (July 25, 1978).

[41] *See, e.g.,* 78 FR 2134 (Jan. 9, 2013), 47 FR 7306, 7309 (Feb. 18, 1982), 43 FR 25735 (Jun. 17, 1978), and 46 FR 26371, 26373 (May 12, 1981).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of the Termination of the Receivership of 10508, Frontier Bank, FSB Palm Desert, California

The Federal Deposit Insurance Corporation (''FDIC''), as Receiver for 10508 Frontier Bank, FSB, Palm Desert, California (''Receiver'') has been authorized to take all actions necessary to terminate the receivership estate of Frontier Bank, FSB (''Receivership Estate''); the Receiver has made all dividend distributions required by law.

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds.

Effective November 1, 2016, the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Dated: November 1, 2016.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2016–26852 Filed 11–4–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of

a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 5, 2016.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *Atlantic Coast Financial Corporation:* To become a bank holding company by acquiring 100 percent of the outstanding shares of Atlantic Coast Bank, both of Jacksonville, Florida.

Board of Governors of the Federal Reserve System, November 2, 2016.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2016–26863 Filed 11–4–16; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–17–0950]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

The National Health and Nutrition Examination Survey (NHANES), (OMB No. 0920–0950, expires 12/31/2017)—Revision—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall collect statistics on the extent and nature of illness and disability; environmental, social and other health hazards; and determinants of health of the population of the United States.

The National Health and Nutrition Examination Survey (NHANES) have been conducted periodically between 1970 and 1994, and continuously since 1999 by the National Center for Health Statistics, CDC. Annually, approximately 14,410 respondents participate in some aspect of the full survey. Up to 13,104 additional persons might participate in tests of procedures, special studies, or methodological studies. Participation in NHANES is completely voluntary and confidential. A three-year approval is requested.

The data collected through NHANES allows for the production descriptive statistics which measure the health and nutrition status of the general population. Through the use of physical examinations, laboratory tests, and interviews NHANES studies the relationship between diet, nutrition and health in a representative sample of the civilian noninstitutionalized population of the United States. NHANES monitors the prevalence of chronic conditions and risk factors. NHANES data are used to produce national reference data on height, weight, and nutrient levels in the blood. NHANES also seeks to be responsive in exploring emerging public health issues and new health related technologies. Results from more recent NHANES can be compared to findings reported from previous surveys to monitor changes in the health of the U.S. population over time. NHANES collects personal identification information. Participant level data items will include basic demographic information, name, address, social security number, Medicare number and participant health information to allow for linkages to other data sources such as the National Death Index (OMB No. 0920–0124, expires 10/31/2016 and data from the Centers for Medicare and Medicaid Services (CMS).

A variety of agencies sponsor data collection components on NHANES. To keep burden down, NCHS cycles in and out various components. Health interviews are conducted in the participants' household. Physical exams are conducted in the Mobile Examination Center (MEC). The 2017–2018 NHANES physical examination includes the following components: Anthropometry (all ages), 24-hour dietary recall (all ages), physician's examination (all ages, blood pressure is collected here), and oral health examination (ages 1 and older, body composition using Dual X-ray Absorptiometry (DXA) exam (ages 8–59) and hearing (ages 6–19 and 70+ (and above)). The hearing age range for 2017–18 is a modification (The 2015–16 hearing age range was 20–69 years).

While at the examination center additional interview questions are asked (6 and older), a second 24-hour dietary recall (all ages) is scheduled to be conducted by phone 3–10 days later. In 2017 we plan to add a liver elastography (ultrasound) exam for participants 12 years and older. A set of alcohol and liver-related questions, and a hip measurement will also be added to complement the liver exam. The age range for liver-related blood test (serum ferritin) already collected in NHANES is being expanded from female participants 12–49 to all participants 12 years and older. The existing collection of serum ferritin in children 1–5 years will continue. We will cycle bone density for hip and spine back into the (DXA) exam for (ages 50+). The Osteoporosis questionnaire will also cycle back into NHANES to complement the changes to the DXA exam. These questions will be asked of participants 50+.

NHANES plans to conduct a blood pressure methodology study. The study population will be NHANES participants aged 6 and older who agree to come to the Mobile Examination Center (MEC).

The bio-specimens collected for laboratory analytes include urine, blood, vaginal and penile swabs, and household water collection. Serum, plasma and urine specimens are stored for future testing, including genetic research, if the participant consents. NHANES 2017–18 plans to add the following lab tests: Three Phthalates in urine (ages 3+); nine urinary flame retardants in urine (ages 3+); one insect repellant in urine (ages 3+); one volatile organic compound (VOC) metabolite in urine (ages 3+); eighteen tobacco biomarkers in urine (ages 3+); two metals in urine (ages 3+); vitamin C in serum (ages 6+); vitamins A, E, and carotenoids in serum (ages 6+); Unsaturated Iron Binding Capacity (UIBC)/Total Iron Binding Capacity (TIBC) in serum (ages 12+); congenital cytomegalovirus (CMV) in sera (ages 1–5); and a test in urine for Mycoplasm genitalium (ages 14–59).

In addition metals in whole blood are changing from a one-half sample to a full sample (ages 1+). Polycyclic Aromatic Hydrocarbons (PAHs) are being discontinued in the smoker oversample subgroup, however testing will continue in a ⅓ subsample of general NHANES participants.

The 2017–18 survey will also bring back the Flexible Consumer Behavior Survey Phone follow-Up questionnaire for participant ages 1+. This takes place in the home after the second dietary recall is completed.

The following major examination or laboratory items, that had been included in the 2015–2016 NHANES, were cycled out for NHANES 2017–2018: Pubertal maturation, Oral Glucose Tolerance Test (OGTT), oral Human Papilloma Virus (HPV) rinse, Sagittal Abdominal Diameter (SAD), dental fluorosis assessment, dental fluorosis imaging (DFI), plasma, urine and water fluoride, Apo B analysis, three metals in serum and three hormones and binding proteins.

Most sections of the NHANES interviews provide self-reported information to be used either in concert with specific examination or laboratory content, as independent prevalence estimates, or as covariates in statistical analysis (*e.g.,* socio-demographic characteristics). Some examples include alcohol, drug, and tobacco use, sexual behavior, prescription and aspirin use, and indicators of oral, bone, reproductive, and mental health. Several interview components support the nutrition monitoring objective of NHANES, including questions about food security and nutrition program participation, dietary supplement use, and weight history/self-image/related behavior.

In 2017–2018, we also plan to implement electronic consent procedures in NHANES. The consent for birth certificate linkage that had been included in previous NHANES will be dropped from NHANES 2017–2018. The survey may conduct a Vaccination Providers' Records Check project with an emphasis on Human Papilloma Virus (HPV), an Ambulatory Blood Pressure Methodology (ABPM) study, test questions related to Chronic Kidney Disease (CKD), adopt digital imaging technology to enhance the existing collection of dietary supplement information, implement multi-mode screening, conduct specimen collection for liver-related DNA markers, and cycle back in consent to store DNA, if resources permit, in the current or in a future cycle of NHANES.

There is no cost to respondents other than their time. Total burden hours requested is 79,894.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Individuals in households	NHANES Questionnaire	14,410	1	2.5	36,025
Individuals in households	Blood Pressure Methodology Study Phase 1.	1,404	1	30/60	702
Individuals in households	Blood Pressure Methodology Study Phase 2.	2000	1	30/60	1000
Individuals in households	Flexible Consumer Behavior Survey Phone Follow-Up.	5,000	1	20/60	1,667
Individuals in households	Developmental Projects & Special Studies	3,500	1	3	10,500
Individuals in households	Wearable Device Projects	1,200	1	25	30,000

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–26831 Filed 11–4–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–17–16BBS]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of

the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Airline and Traveler Information Collection: Domestic Manifests and the Passenger Locator Form—Existing Information Collection in use without an OMB Control Number—National Center for Emerging Zoonotic and Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Stopping a communicable disease outbreak—whether it is naturally occurring or intentionally caused—requires the use of the most rapid and effective public health tools available. Basic public health practices, such as collaborating with airlines in the identification and notification of potentially exposed contacts, are critical tools in the fight against the introduction, transmission, and spread of communicable diseases in the United States.

The collection of timely, accurate, and complete contact information enables Quarantine Public Health Officers in CDC's Division of Global Migration and Quarantine (DGMQ) to notify state and local health departments in order for them to make contact with individuals who may have been exposed to a contagious person during travel and identify appropriate next steps.

Under the Public Health Service Act (42 United States Code 264) and under 42 Code of Federal Regulations (CFR) 70.2 CDC can order airlines traveling between states to submit a data set, including airline flight details, and passenger and crew member information, if CDC reasonably believes that a traveler exposed to or infected with a communicable disease of public health concern could have put other passengers at risk for a communicable disease.

In order to collect this data set, aka a manifest, CDC seeking approval for domestic airline and traveler information orders under current authorities in 42 Code of Federal Regulations (CFR) 70.2. This activity is already current practice.

Additionally, CDC requests to transition the Passenger Locator Form (PLF), previously included and approved by OMB in 0920–0134 Foreign Quarantine Regulations, into this Information Collection Request. Further, CDC is requesting approval for the use of the PLF for the collection of traveler information from individuals on domestic flights. The PLF, a formed developed by the International Civil Aviation Organization (ICAO) in concert with its international member states and other aviation organizations, is used when there is a confirmation or strong suspicion that an individual(s) aboard a flight is infected with or exposed to a communicable disease that is a threat to co-travelers, and CDC is made aware of the individual(s) prior to arrival in the United States. This prior awareness can provide CDC with an opportunity to collect traveler contact information directly from the traveler prior to departure from the arrival airport. CDC conducts this information collection under its regulations at 42 CFR 70.6 for domestic flights and 71.32 and 71.33 for flights arriving from foreign countries.

CDC seeks a three-year OMB clearance for this information collection request.

Estimated Annualized Burden Hours

CDC estimates that for each set of airline and traveler information ordered, airlines require approximately six hours to review the order, search their records, and send those records to CDC. CDC anticipates that travelers will need approximately five minutes to complete the PLF. There is no cost to respondents other than their time to perform these actions. For manifest information, CDC does not have a specified format for these submissions, only that it is one acceptable to both CDC and the respondent.

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Airline Medical Officer or Equivalent/Computer and Information Systems Manager.	Domestic TB Manifest Template	1	1	360/60
Airline Medical Officer or Equivalent/Computer and Information Systems Manager.	Domestic Non-TB Manifest Template	28	1	360/60
Traveler	Public Health Passenger Locator Form: Outbreak of public health significance (international flights).	2,700,000	1	5/60
Traveler	Public Health Passenger Locator Form: Limited onboard exposure (international flights.	800	1	5/60
Traveler	Public Health Passenger Locator Form (domestic flights).	800	1	5/60
Total				

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–26829 Filed 11–4–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–17–0612]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Well-Integrated Screening and Evaluation for Women Across the Nation (WISEWOMAN) Reporting System (OMB #0920–0612, exp. 12/31/2016)—Extension—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The WISEWOMAN program (Well-Integrated Screening and Evaluation for Women Across the Nation), sponsored by the Centers for Disease Control and Prevention (CDC), was established to examine ways to improve the delivery of services for women who have limited access to health care and elevated risk factors for cardiovascular disease (CVD). The program focuses on reducing CVD risk factors and provides screening services for selected risk factors such as elevated blood cholesterol, hypertension, and abnormal blood glucose levels. The program also provides women with referrals to lifestyle programs and medical care. The WISEWOMAN program provides services to women who are jointly enrolled in the National Breast and Cervical Cancer Early Detection Program (NBCCEDP), also administered by CDC.

The WISEWOMAN program is administered by state health departments and tribal programs. In 2013, new cooperative agreements were awarded under Funding Opportunity Announcement DP13–1302. These awards are currently in the final year of funding, but may be extended by CDC for one additional year, subject to the availability of funds.

CDC collects two types of information from WISEWOMAN awardees. The hardcopy Annual Progress Report provides a narrative summary of each awardee's objectives and the activities undertaken to meet program goals. The estimated burden per response is 16 hours.

In addition, each WISEWOMAN awardee submits an electronic data file to CDC twice per year. The Minimum Data Elements (MDE) file contains de-identified, client-level information about the cardiovascular disease risk factors of women served by the program, and the number and type of lifestyle program sessions they attend. The estimated burden per response for the MDE file is 24 hours.

CDC seeks a one-year extension to enable reporting for the final year of activities funded under the current cooperative agreement and the option year, subject to the availability of funds. There are no changes to the information collected, the burden per response, reporting frequency, the number of awardees, or the total annualized burden hours.

CDC will continue to use the information collected from WISEWOMAN awardees to support program monitoring and improvement activities, evaluation, and assessment of program outcomes. The overall program evaluation is designed to demonstrate how WISEWOMAN can obtain more complete health data on vulnerable populations, promote public education about disease incidence, cardiovascular disease risk-factors, health promotion, improve the availability of screening and diagnostic services for under-served women, ensure the quality of services provided to underserved women, and develop strategies for improved interventions. Participation in this information collection is required as a condition of cooperative agreement funding. There are no costs to respondents other than their time.

The total annualized burden hours are 1,344.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)
WISEWOMAN Awardees	Screening and Assessment and Lifestyle Program MDEs.	21	2	24
	Annual Progress Report	21	1	16

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–26830 Filed 11–4–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–6071–N]

Medicare, Medicaid, and Children's Health Insurance Programs; Provider Enrollment Application Fee Amount for Calendar Year 2017

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces a $560.00 calendar year (CY) 2017 application fee for institutional providers that are initially enrolling in the Medicare or Medicaid program or the Children's Health Insurance Program (CHIP); revalidating their Medicare, Medicaid, or CHIP enrollment; or adding a new Medicare practice location. This fee is required with any enrollment application submitted on or after January 1, 2017 and on or before December 31, 2017.

DATES: Effective Date: This notice is effective on January 1, 2017.

FOR FURTHER INFORMATION CONTACT: Frank Whelan, (410) 786–1302.

SUPPLEMENTARY INFORMATION:

I. Background

In the February 2, 2011 **Federal Register** (76 FR 5862), we published a final rule with comment period titled ''Medicare, Medicaid, and Children's Health Insurance Programs; Additional Screening Requirements, Application Fees, Temporary Enrollment Moratoria, Payment Suspensions and Compliance Plans for Providers and Suppliers.'' This rule finalized, among other things, provisions related to the submission of application fees as part of the Medicare, Medicaid, and CHIP provider enrollment processes. As provided in section 1866(j)(2)(C)(i) of the Social Security Act (the Act) (as amended by section 6401 of the Affordable Care Act) and in 42 CFR 424.514, ''institutional providers'' that are initially enrolling in the Medicare or Medicaid programs or CHIP, revalidating their enrollment, or adding a new Medicare practice location are required to submit a fee with their enrollment application. An ''institutional provider'' for purposes of Medicare is defined at § 424.502 as ''(a)ny provider or supplier that submits a paper Medicare enrollment application using the CMS–855A, CMS–855B (not including physician and non-physician practitioner organizations), CMS–855S, or associated Internet-based PECOS enrollment application.'' As we explained in the February 2, 2011 final rule (76 FR 5914), in addition to the providers and suppliers subject to the application fee under Medicare, Medicaid-only, and CHIP-only institutional providers would include nursing facilities, intermediate care facilities for persons with intellectual disabilities (ICF/IID), psychiatric residential treatment facilities, and may include other institutional provider types designated by a state in accordance with their approved state plan.

As indicated in § 424.514 and § 455.460, the application fee is not required for either of the following:

- A Medicare physician or non-physician practitioner submitting a CMS–855I.
- A prospective or revalidating Medicaid or CHIP provider—

++ Who is an individual physician or non-physician practitioner; or

++ That is enrolled in Title XVIII of the Act or another state's Title XIX or XXI plan and has paid the application fee to a Medicare contractor or another state.

II. Provisions of the Notice

A. CY 2016 Fee Amount

In the December 3, 2015 **Federal Register** (80 FR 75680), we published a notice announcing a fee amount for the period of January 1, 2016 through December 31, 2016 of $554.00. This figure was calculated as follows:

- Section 1866(j)(2)(C)(i)(I) of the Act established a $500 application fee for institutional providers in CY 2010.
- Consistent with section 1866(j)(2)(C)(i)(II) of the Act, § 424.514(d)(2) states that for CY 2011 and subsequent years, the preceding year's fee will be adjusted by the percentage change in the consumer price index (CPI) for all urban consumers (all items; United States city average, CPI–U) for the 12-month period ending on June 30 of the previous year.
- The CPI–U increase for CY 2011 was 1.0 percent, based on data obtained from the Bureau of Labor Statistics (BLS). This resulted in an application fee amount for CY 2011 of $505 (or $500 × 1.01).
- The CPI–U increase for the period of July 1, 2010 through June 30, 2011 was 3.54 percent, based on BLS data. This resulted in an application fee amount for CY 2012 of $522.87 (or $505 × 1.0354). In the February 2, 2011 final rule, we stated that if the adjustment sets the fee at an uneven dollar amount, we would round the fee to the nearest whole dollar amount. Accordingly, the application fee amount for CY 2012 was rounded to the nearest whole dollar amount, or $523.00.
- The CPI–U increase for the period of July 1, 2011 through June 30, 2012 was 1.664 percent, based on BLS data. This resulted in an application fee amount for CY 2013 of $531.70 ($523 × 1.01664). Rounding this figure to the nearest whole dollar amount resulted in a CY 2013 application fee amount of $532.00.
- The CPI–U increase for the period of July 1, 2012 through June 30, 2013 was 1.8 percent, based on BLS data. This resulted in an application fee amount for CY 2014 of $541.576 ($532 × 1.018). Rounding this figure to the nearest whole dollar amount resulted in a CY 2014 application fee amount of $542.00.
- The CPI–U increase for the period of July 1, 2013 through June 30, 2014 was 2.1 percent, based on BLS data. This resulted in an application fee amount for CY 2015 of $553.382 ($542 × 1.021). Rounding this figure to the nearest whole dollar amount resulted in a CY 2015 application fee amount of $553.00.
- The CPI–U increase for the period of July 1, 2014 through June 30, 2015 was 0.2 percent, based on BLS data. This resulted in an application fee amount for CY 2016 of $554.106 ($553 × 1.002). Rounding this figure to the nearest whole dollar amount resulted in a CY 2016 application fee amount of $554.00.

B. CY 2017 Fee Amount

Using BLS data, the CPI–U increase for the period of July 1, 2015 through June 30, 2016 was 1.0 percent. This results in a CY 2017 application fee amount of $559.56 ($554 × 1.01). As we must round this to the nearest whole dollar amount, the resultant application fee amount for CY 2017 is $560.00.

III. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping, or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995. However, it does reference previously

approved information collections. The forms CMS–855A, CMS–855B, and CMS–855I are approved under OMB control number 0938–0685; the CMS–855S is approved under OMB control number 0938–1056.

IV. Regulatory Impact Statement

A. Background

We have examined the impact of this notice as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits, including potential economic, environmental, public health and safety effects, distributive impacts, and equity. A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). As explained in this section of the notice, we estimate that the total cost of the increase in the application fee will not exceed $100 million. Therefore, this notice does not reach the $100 million economic threshold and is not considered a major notice.

B. Costs

The costs associated with this notice involve the increase in the application fee amount that certain providers and suppliers must pay in CY 2017.

1. Estimates of Number of Affected Institutional Providers in December 3, 2015 Fee Notice

In the December 3, 2015 application fee notice, we estimated that based on CMS statistics—

- 10,000 newly enrolling Medicare institutional providers would be subject to and pay an application fee in CY 2016.
- 45,000 revalidating Medicare institutional providers would be subject to and pay an application fee in CY 2016.
- 9,000 newly enrolling Medicaid and CHIP providers would be subject to and pay an application fee in CY 2016.
- 21,000 revalidating Medicaid and CHIP providers would be subject to and pay an application fee in CY 2016.

2. CY 2017 Estimates

a. Medicare

Based on CMS data, we estimate that in CY 2017 approximately—

- 10,000 newly enrolling institutional providers will be subject to and pay an application fee; and
- 43,792 revalidating institutional providers will be subject to and pay an application fee.

Using a figure of 53,792 (10,000 newly enrolling + 43,792 revalidating) institutional providers, we estimate an increase in the cost of the Medicare application fee requirement in CY 2017 of $322,752 (or 53,792 × $6 (or $560 minus $554)) from our CY 2016 projections and as previously described.

b. Medicaid and CHIP

Based on CMS and state statistics, we estimate that approximately 30,000 (9,000 newly enrolling + 21,000 revalidating) Medicaid and CHIP institutional providers will be subject to an application fee in CY 2017. Using this figure, we project an increase in the cost of the Medicaid and CHIP application fee requirement in CY 2017 of $180,000 (or 30,000 × $6 (or $560 minus $554)) from our CY 2016 projections and as previously described.

c. Total

Based on the foregoing, we estimate the total increase in the cost of the application fee requirement for Medicare, Medicaid, and CHIP providers and suppliers in CY 2017 to be $502,752 ($180,000 + $322,752) from our CY 2016 projections.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of less than $7.5 million to $38.5 million in any 1 year. Individuals and states are not included in the definition of a small entity. As we stated in the RIA for the February 2, 2011 final rule with comment period (76 FR 5952), we do not believe that the application fee will have a significant impact on small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area for Medicare payment regulations and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined, and the Secretary certifies, that this notice would not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2016, that threshold is approximately $146 million. The Agency has determined that there will be minimal impact from the costs of this notice, as the threshold is not met under the UMRA.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has federalism implications. Since this notice does not impose substantial direct costs on state or local governments, the requirements of Executive Order 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

Dated: September 22, 2016.

Andrew M. Slavitt,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2016–26828 Filed 11–4–16; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[OMB No.: 0970–0445]

Proposed Information Collection Activity; Comment Request

Title: Implementation Grants to Develop a Model Intervention for Youth/Young Adults with Child Welfare Involvement at Risk of Homelessness: Phase II.

Description: The Administration for Children and Familes (ACF) at the U.S.

Department of Health and Human Services (HHS) intends to collect data for an evaluation of the initiative, Implementation Grants to Develop a Model Intervention for Youth/Young Adults with Child Welfare Involvement at Risk of Homelessness: Phase II. This builds on the previously approved ''Planning Grants to Develop a Model Intervention for Youth/Young Adults with Child Welfare Involvement at Risk of Homelessness'' (Phase I). Phase II is an initiative, funded by the Children's Bureau (CB) within ACF, that will support implementation grants for interventions designed to intervene with youth who have experienced time in foster care and are most likely to have a challenging transition into adulthood, including homelessness and unstable housing experiences. CB awarded six implementation grants (Phase II) in September 2015. During the implementation phase, organizations will conduct a range of activities to fine-tune their comprehensive service model, determine whether their model is being implemented as intended, and develop plans to evaluate the model under a potential future funding opportunity (Phase III). During Phase II, ACF will engage a contractor to: Conduct a cross-site process evaluation. Data collected for the process evaluation will be used to assess grantees' organizational capacity to implement and evaluate the model interventions and to monitor each grantee's progress toward achieving the goals of the implementation period.

Data for the process evaluation will be collected through: Interviews during site visits.

Respondents: Grantee agency directors and staff; partner agency directors and staff. Partner agencies may vary by site, but are expected to include child welfare, mental health, and youth housing/homelessness agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Total/annual number of respondents	Number of responses per respondent	Average burden hours per response	Total/annual burden hours
Call to coordinate site visit	6	1	1	6
Grantee Site Visit-Semi-Structured Interview Topic Guide	60	1	1.5	90
Estimated Total Annual Burden Hours				96

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation, 330 C Street SW., Washington, DC 20201, Attn: OPRE Reports Clearance Officer. Email address: *OPREinfocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Mary Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2016–26806 Filed 11–4–16; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–3586]

Agency Information Collection Activities; Proposed Collection; Comment Request; Focus Groups About Drug Products as Used by the Food and Drug Administration

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 the information collection resulting from focus groups about drug products as used by FDA.

DATES: Submit either electronic or written comments on the collection of information by January 6, 2017.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

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

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

Instructions: All submissions received must include the Docket No. FDA–2016–N–3586 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Focus Groups About Drug Products as Used by the Food and Drug Administration.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

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

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

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, Three White Flint North, 10A63, 11601 Landsdown St., North Bethesda, MD 20852, *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.

Focus Groups About Drug Products as Used by the Food and Drug Administration, OMB Control Number 0910–0677—Extension

Focus groups provide an important role in gathering information because they allow for a more indepth understanding of individuals' attitudes, beliefs, motivations, and feelings than do quantitative studies. Focus groups serve the narrowly defined need for direct and informal opinion on a specific topic and as a qualitative research tool have three major purposes:

• To obtain information that is useful for developing variables and measures for quantitative studies;

• to better understand people's attitudes and emotions in response to topics and concepts;

• and to further explore findings obtained from quantitative studies.

FDA will use focus group findings to test and refine its ideas and to help develop messages and other communications, but will generally conduct further research before making important decisions such as adopting new policies and allocating or redirecting significant resources to support these policies.

FDA's Center for Drug Evaluation and Research, Office of the Commissioner, and any other Centers or Offices conducting focus groups about regulated drug products may need to conduct focus groups on a variety of subjects related to consumer, patient, or health care professional perceptions and use of drug products and related materials, including but not limited to, direct-to-consumer prescription drug promotion, physician labeling of prescription drugs, Medication Guides, over-the-counter drug labeling, emerging risk communications, patient labeling, online sales of medical products, and consumer and professional education.

Annually, FDA projects about 20 focus group studies using 160 focus groups with an average of 9 persons per group, and lasting an average of 1.75 hours each. FDA is requesting this burden for unplanned focus groups so as not to restrict the Agency's ability to gather information on public sentiment for its proposals in its regulatory and communications programs.

FDA estimates the burden of this information collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Information collection activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Focus Groups About Drug Products	1,440	1	1,440	1.75	2,520

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: November 1, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–26794 Filed 11–4–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–3585]

Agency Information Collection Activities; Proposed Collection; Comment Request; Character-Space-Limited Online Prescription Drug Communications

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 and to allow 60 days for public comment in response to the notice. This notice solicits comments on research entitled, ''Character-Space-Limited Online Prescription Drug Communications.'' The objective of this research is to test whether a link to prescription drug risk information can effectively convey the risks associated with a drug when benefit claims about that drug are made within character-space-limited communications used in prescription drug promotion.

DATES: Submit either electronic or written comments on the collection of information by January 6, 2017.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

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

Instructions: All submissions received must include the Docket No. FDA–2016–N–3585 for ''Character-Space-Limited Online Prescription Drug Communications.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

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

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

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, Three White Flint North, 10A63, 11601 Landsdown St., North Bethesda, MD 20852, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

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 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.

Character Space-Limited Online Prescription Drug Communications, OMB Control Number 0910—NEW

Section 1701(a)(4) of the Public Health Service Act (42 U.S.C. 300u(a)(4)) authorizes the FDA to conduct research relating to health information. Section 1003(d)(2)(C) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 393(d)(2)(C)) authorizes FDA to conduct research relating to drugs and other FDA regulated products in carrying out the provisions of the FD&C Act.

Prescription drug regulations require a fair balance of the content and prominence of risk and benefit information in prescription drug product claim promotion. The rise of Internet communications that have character space limitations, such as sponsored link promotion and microblog messaging, has led to questions about how to use these communications for prescription drug promotion while complying with the fair balance requirements. In 2014, FDA released a draft guidance entitled, ''Guidance for Industry Internet/Social Media Platforms with Character Space Limitations—Presenting Risk and Benefit Information for Prescription Drugs and Medical Devices,'' (Ref. 1) which states:

> Regardless of character space constraints that may be present on certain Internet/social media platforms, if a firm chooses to make a product benefit claim, the firm should also incorporate risk information within the same character-space-limited communication. The firm should also provide a mechanism to allow direct access to a more complete discussion of the risks associated with its product.

The concept of linking to risk information by providing substantive product risk information on a landing page (''link to the risk information''), rather than presenting risk information together with product benefit information within the character-space-limited communication, has been the subject of legislation and has been discussed as an option by some in industry and media (for example, Refs. 2–5).

The studies are designed to address the question of whether substantive risk information in the character-space-limited communications is effective in communicating risks when benefit claims are made, or whether a link to the risk information is sufficient. Within each study, we will manipulate whether or not substantive risk information appears in the character-space-limited communication.

Another factor to consider is that when consumers turn to the Internet for information, they are driven by different goals. These goals can affect what information they pay attention to and what kind of information they find (Refs. 6–8). Therefore, we will also manipulate whether participants are instructed to browse the information or to search for specific information.

Two pretests will be conducted to test the goal instructions, stimuli, questionnaire, and procedure. In Studies 1–4, participants will be randomly assigned to one experimental condition and will view the corresponding study materials (Tables 1–4). Across all studies, we will examine two different character-space-limited formats and two medical conditions. For Pretest 1 and Study 1, the study materials will be a character-space-limited communication about a fictional weight loss drug, embedded in a Google search page about weight loss. The Study 2 materials will be a character-space-limited communication about a fictional drug to treat migraine, embedded in a Google search page about migraine. The Study 3 materials will be a character-space-limited communication about a fictional weight loss drug, embedded in a Twitter search page about weight loss. The Pretest 2 and Study 4 materials will be a character-space-limited communication about a fictional drug to treat migraine, embedded in a Twitter search page about migraine.

All study materials will allow for scrolling and clicking on any links. The study materials will be accessible by participants only. After viewing the study materials, participants will complete a questionnaire that assesses participants' retention of the risk information and their perceptions of the drug's risks and benefits. We will also measure covariates such as demographics and literacy. The questionnaires are available upon request.

We hypothesize that participants who see substantive risk information in the character-space-limited communication, compared with link-only participants, will have greater retention of the risk included in the communication and higher perceived risk. We will explore whether including substantive risk information in the character-space-limited communication affects the likelihood that participants notice the communication or click the link to the risk information. We hypothesize that participants with a search goal, compared with a browse goal, will have greater retention of the benefit and risk information and higher perceived risk because they will be more likely to notice the character-space-limited communication and to click the link to the risk information. We will test these hypotheses in Studies 1–4 to determine whether these effects hold across different medical conditions and different character-space-limited platforms. To test these hypotheses, we will conduct inferential statistical tests such as logistic regression and analysis of variance.

All participants will be 18 years of age or older. We will exclude individuals who work in healthcare or marketing. Half of the studies will have a sample of participants who self-report needing to lose 30 pounds or more; the other half will have a sample of participants who self-report suffering from migraines. We selected these samples to increase the likelihood that participants will be interested in the fictitious study drugs and therefore motivated to pay attention during the study. The studies will be conducted with an Internet panel. With the sample sizes described below, we will have sufficient power to detect small-sized effects in Studies 1–4 (Table 5).

TABLE 1—STUDY 1: GOOGLE SPONSORED LINK, WEIGHT LOSS

	Goal	
	Browse	Search
Risk Location:		
In character-space-limited communication		
On landing page only		

TABLE 2—STUDY 2: GOOGLE SPONSORED LINK, MIGRAINE

	Goal	
	Browse	Search
Risk Location:		
In character-space-limited communication		
On landing page only		

TABLE 3—STUDY 3: TWITTER, WEIGHT LOSS

	Goal	
	Browse	Search
Risk Location:		
In character-space-limited communication		
On landing page only		

TABLE 4—STUDY 4: TWITTER, MIGRAINE

	Goal	
	Browse	Search
Risk Location:		
In character-space-limited communication		
On landing page only		

FDA estimates the burden of this collection of information as follows:

TABLE 5—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Pretest 1 screener	464	1	1	.08 (5 min.)	39
Pretest 2 screener	464	1	1	.08 (5 min.)	39
Study 1 screener	786	1	1	.08 (5 min.)	66
Study 2 screener	786	1	1	.08 (5 min.)	66
Study 3 screener	786	1	1	.08 (5 min.)	66
Study 4 screener	786	1	1	.08 (5 min.)	66
Pretest 1	277	1	1	.33 (20 min.)	93
Pretest 2	277	1	1	.33 (20 min.)	93
Study 1	469	1	1	.33 (20 min.)	157
Study 2	469	1	1	.33 (20 min.)	157
Study 3	469	1	1	.33 (20 min.)	157
Study 4	469	1	1	.33 (20 min.)	157
Total	6,502				1,156

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

II. References

The following references are on display in the Division of Dockets Management (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *http://www.regulations.gov.* FDA has verified the Web site addresses, as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.

1. Guidance for Industry: Internet/Social Media Platforms with Character Space Limitations—Presenting Risk and Benefit Information for Prescription Drugs and Medical Devices, available at: *http://www.fda.gov/downloads/drugs/guidancecomplianceregulatoryinformation/guidances/ucm401087.pdf.*
2. *https://www.congress.gov/bill/114th-congress/house-bill/2479/text.*
3. *http://www.fda.gov/AboutFDA/CentersOffices/OfficeofMedicalProductsandTobacco/CDER/ucm184250.htm.*
4. *http://www.politico.com/story/2015/06/at-the-fda-drugs-and-tweets-dont-mix-118693.*
5. *http://www.dtcperspectives.com/is-one-click-in-the-cards/.*
6. Detlor, B., S. Sproule, and C. Gupta, ''Pre-Purchase Online Information Seeking: Search Versus Browse.'' *Journal of Electronic Commerce Research,* vol. 4, pp. 72–84, 2003.
7. Pieters, R. and M. Wedel, ''Goal Control of Attention to Advertising: The Yarbus Implication.'' *Journal of Consumer Research,* vol. 34, pp. 224–233, 2007.
8. Schlosser, A. E., ''Experiencing Products in the Virtual World: The Role of Goal and Imagery in Influencing Attitudes Versus Purchase Intentions.'' *Journal of Consumer Research,* vol. 30, pp. 184–198, 2003, *http://dx.doi.org/10.1086/376807.*

Dated: October 31, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–26793 Filed 11–4–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0086]

Agency Information Collection Activities; Proposed Collection; Comment Request; Potential Tobacco Product Violations Reporting Form

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 the collection of information contained in FDA's Tobacco Product Violations Reporting Form.

DATES: Submit either electronic or written comments on the collection of information by January 6, 2017.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

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

Instructions: All submissions received must include the Docket No. FDA–2014–N–0086 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Potential Tobacco Product Violations Reporting Form.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

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

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

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, Three White Flint North, 10A63, 11601 Landsdown St., North Bethesda, MD 20852, *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.

Potential Tobacco Product Violations Reporting Form—OMB Control Number 0910–0716—Extension

On June 22, 2009, the President signed the Family Smoking Prevention and Tobacco Control Act (the Tobacco Control Act) (Pub. L. 111–31) into law. The Tobacco Control Act amended section 201 *et seq.* of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 321 *et seq.*) by adding a new chapter granting FDA important new authority to regulate the manufacture, marketing, and distribution of tobacco products to protect the public health generally and to reduce tobacco use by minors. FDA is requesting an extension of OMB approval for the collection of information to accept consumer and other stakeholder feedback and notification of potential violations of the FD&C Act, as amended by the Tobacco Control Act.

FDA created a Tobacco Call Center (with a toll-free number: 1–877–CTP–1373). Callers are able to report potential violations of the Tobacco Control Act, and FDA may conduct followup investigations based on information received. When callers report a violation, the caller will be asked to provide as much certain information as they can recall, including: The date the potential violation occurred; product type (*e.g.*, cigarette, smokeless, roll-your-own, cigar, e-cigarette, hookah, pipe tobacco); tobacco brand; potential violation type; type of potentially violative promotional materials; who potentially violated; and the name, address, phone number, and email address of the potential violator. The caller will also be asked to list the potential violator's Web site (if available), describe the potential violation, and provide any additional files or information pertinent to the potential violation.

FDA currently provides a form that may be used to solicit this information from the caller (Form FDA 3779, Potential Tobacco Product Violations Report), and seeks renewal of Form FDA 3779. This form is posted on FDA's Web site. The public and interested stakeholders are also able to report information regarding possible violations of the Tobacco Control Act through the following methods: Calling the Tobacco Call Center using the Center for Tobacco Products' (CTP) toll-free number; using a fillable Form FDA 3779 found on FDA's Web site; downloading a PDF version of the form to send via email or mail to FDA; requesting a copy of Form FDA 3779 by contacting CTP and sending by mail to FDA; and sending a letter to FDA's CTP.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity and FDA form 3779	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Reporting violations of the FD&C Act, as amended by the Tobacco Control Act via telephone, Internet form, mail, smartphone application, or email.	750	2	1,500	0.25 (15 minutes)	375

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA estimates that submitting the information (by telephone, Internet form, paper form by mail, or email) will take 0.25 hour (*i.e.,* 15 minutes) per response. Based on the type and rate of reporting that has been submitted through the Potential Tobacco Violation Reporting Form in the past, in addition to the increase that FDA has recently experienced in the rate of reporting due to the recent rule, ''Deeming Tobacco Products To Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act,'' FDA estimates the number of annual respondents to this collection of information will be 750, who will each submit 2 reports by telephone, Internet form, paper form, or email. Each report is expected to take 0.25 hour to complete and submit; therefore, total burden hours for this collection of information is estimated to be 375 hours (1,500 responses × 0.25 hour per response).

Dated: October 27, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–26758 Filed 11–4–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–0539]

Clinical Considerations for Investigational Device Exemptions for Neurological Devices Targeting Disease Progression and Clinical Outcomes; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of the

guidance entitled ''Clinical Considerations for Investigational Device Exemptions (IDEs) for Neurological Devices Targeting Disease Progression and Clinical Outcomes.'' The Center for Devices and Radiological Health (CDRH) developed this guidance to assist sponsors who intend to submit an IDE to FDA to conduct clinical trials on medical devices targeting neurological disease progression and clinically meaningful patient centered outcomes. FDA considered comments received on the draft guidance and revised the guidance as appropriate.

DATES: Submit either electronic or written comments on this guidance at any time. General comments on Agency guidance documents are welcome at any time.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

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

Instructions: All submissions received must include the Docket No. FDA–2016–D–0539 for ''Clinical Considerations for Investigational Device Exemptions (IDEs) for Neurological Devices Targeting Disease Progression and Clinical Outcomes.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

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

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

An electronic copy of the guidance document is available for download from the Internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled ''Clinical Considerations for Investigational Device Exemptions (IDEs) for Neurological Devices Targeting Disease Progression and Clinical Outcomes'' to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Carlos Peña, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2680, Silver Spring, MD 20993–0002, 301–796–6610.

SUPPLEMENTARY INFORMATION:

I. Background

FDA believes that neurological devices intended to slow disease progression and improve clinical outcomes that are meaningful may represent a revolutionary option for patients. FDA developed this guidance to assist sponsors who intend to submit an IDE to FDA to conduct clinical trials on medical devices targeting neurological disease progression and clinically meaningful patient-centered outcomes. The guidance is intended to aid industry and FDA staff in considering the benefits and risks of medical devices that target either the cause or progression of the neurological disorder or condition such as Alzheimer's disease, Parkinson's disease, or Primary Dystonia, rather than their symptoms. It is intended to apply to neurological medical devices that are designed to slow, stop, or reverse the progression of disease and result in clinically meaningful patient outcomes. This guidance provides general study design considerations for clinical trials that investigate neurological devices using biological markers and clinical outcome assessments. A draft guidance regarding general study design considerations for clinical trials that investigate neurological devices using biomarkers and clinical outcome assessments was announced in the **Federal Register** on March 7, 2016 (81 FR 11807) and made available for public comment. The comment period closed on June 6, 2016. FDA reviewed and considered all public comments received and revised the guidance as appropriate.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Clinical Considerations for Investigational Device Exemptions (IDEs) for Neurological Devices Targeting Disease Progression and Clinical Outcomes.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the Internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm*. Guidance documents are also available at *http://www.regulations.gov*. Persons unable to download an electronic copy of ''Clinical Considerations for Investigational Device Exemptions (IDEs) for Neurological Devices Targeting Disease Progression and Clinical Outcomes'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1500021 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078; the collections of information in 21 CFR parts 801 and 809 have been approved under OMB control number 0910–0485; the collections of information in 21 CFR part 50 have been approved under OMB control number 0910–0755; and the collections of information in the guidance document entitled ''Request for Feedback on Medical Device Submissions: The Pre-submission Program and Meetings With Food and Drug Administration Staff'' have been approved under OMB control number 0910–0756.

Dated: November 1, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–26783 Filed 11–4–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–3462]

Establishment of the Patient and Care-Partner Connection; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA or Agency) is establishing a public docket to receive input on the Center for Devices and Radiological Health's (CDRH) new program, entitled the Patient and Care-partner Connection (P&CC). P&CC will partner with patient organizations to provide a means for CDRH staff to formally engage with patients and care-partners. The purpose of this partnership is to gain perspective and feedback from patients, care-partners, and patient organizations on particular topics of interest, such as, the scope and nature of P&CC and how to partner with patient organizations. The Agency is interested in facilitating staff engagement with patients and care-partners regarding specific disease states and/or medical devices used for treatment, diagnosis, or assessment.

DATES: Submit either electronic or written comments by January 6, 2017.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov*.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2016–N–3462 for ''Establishment of the Patient and Care-partner Connection; Establishment of a Public Docket; Request for Comments.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov*. Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any

information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm*.

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

FOR FURTHER INFORMATION CONTACT: Anne Hammer, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5400, Silver Spring, MD 20993, 301–796–4642, FAX: 301–847–8510, *anne.hammer@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

One of the three CDRH 2016–2017 Strategic Priorities is to ''Partner with Patients'' [1] (Ref. 1). This priority reflects and builds on our strong commitment to patients, who are our most important customers. CDRH believes that to successfully achieve this mission, we must consider and engage with patients as partners. With regard to this priority, CDRH also understands that family or care-partners are integral to patient care and management of disease, and we are also committed to engaging them in order to fulfill this mission. FDA will work with both groups to advance the development and evaluation of innovative medical devices and to monitor the performance of marketed devices. In addition, partnerships will be leveraged, by promoting a culture of meaningful patient engagement and interaction between CDRH staff and patients and care-partners.

To achieve this goal, FDA intends to establish a new program, called the Patient and Care-partner Connection (P&CC). This program is designed to provide CDRH staff with a formal process by which they can engage with patients and care-partners to obtain input on key issues. P&CC will broaden CDRH's exposure to patients' and care-partners' experiences regarding specific disease states and/or medical devices used for the patient's treatment, diagnosis, or assessment. It will not solicit or provide external policy advice or opinion.

Additionally, P&CC will provide an avenue for designated groups of patients and care-partners to address specific questions pertinent to their treatment, diagnosis, or assessment by partnering with patient organizations in an effort to connect their members with CDRH staff, when the need for input arises. Patient organizations shall be 501(c)(3) organizations that have infrastructure conducive to soliciting patient and caregiver participation, and whose membership possesses relevant experience. Topics will be highly focused and restricted to specified disease states and/or medical devices.

Patients and care-partners will participate in P&CC on a gratuitous basis. Patients and care-partners will also report any conflict of interests they may have that are pertinent to the discussion, although conflicts of interest may not disqualify a patient or care-partner from participating in P&CC.

II. Patient and Care-Partner Connection Program

The Agency is seeking comments from interested persons on P&CC in general, and on the following questions:

General

- What are potential barriers to inclusion for patients and care-partners?
- What can FDA do to avoid or remedy any barriers to inclusion?
- What might patients and care-partners see as appropriate and effective engagement with FDA?
- How appropriate is the program title, ''Patient and Care-partner Connection''?
- What, if any, other titles should FDA consider?

Inclusion

- What types of organizations are appropriate for such a partnership?
- What are potential barriers to effective communication between FDA, partner organizations, patients, and care-partners?
- How can FDA engage patients, especially those who are hard to reach or from underserved communities who are typically underrepresented in such initiatives?

Communication

- What lines of questioning would be considered appropriate?
- What characteristics of such a program might patients and care-partners view especially positively and/or negatively?
- What methods or qualities of communication might be preferred or convenient for patients and care-partners?

III. Reference

The following reference is on display in the Division of Dockets Management (see **ADDRESSES**) and is available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; it is also available electronically at *http://www.regulations.gov*. FDA has verified the Web site address, as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.

1. FDA, Center for Devices and Radiological Health, ''2016–2017 Strategic Priorities,'' available at *http://www.fda.gov/downloads/AboutFDA/CentersOffices/OfficeofMedicalProductsandTobacco/CDRH/CDRHVisionandMission/UCM481588.pdf*.

Dated: October 31, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–26784 Filed 11–4–16; 8:45 am]

BILLING CODE 4164–01–P

[1] CDRH's 2016–2017 Strategic Priorities, in addition to ''partner[ing] with patients,'' include ''Establish a National Evaluation System for Medical Devices'' and ''Promote a Culture of Quality and Organizational Excellence.''

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0868]

Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance for Industry: Use of Serological Tests To Reduce the Risk of Transmission of Trypanosoma cruzi Infection in Whole Blood and Blood Components Intended for Transfusion

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) 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 establishing notification of a consignee and consignee notification of a recipient's

physician of record regarding a possible increased risk of *Trypanosoma cruzi* (*T. cruzi*) infection.

DATES: Submit either electronic or written comments on the collection of information by January 6, 2017.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

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

Instructions: All submissions received must include the Docket No. FDA–2013–N–0868 for ''Guidance for Industry: Use of Serological Tests to Reduce the Risk of the Transmission of *Trypanosoma cruzi* Infection in Whole Blood and Blood Components Intended for Transfusion.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

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

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

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, Three White Flint North, 10A63, 11601 Landsdown St., North Bethesda, MD 20852, *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.

Guidance for Industry: Use of Serological Tests To Reduce the Risk of Transmission of Trypanosoma cruzi Infection in Whole Blood and Blood Components Intended for Transfusion

OMB Control Number 0910–0681—Extension

The guidance document implements the donor screening recommendations for the FDA-approved serological test systems for the detection of antibodies to *T. cruzi*. The purpose of the donor screening tests is to reduce the risk of transmission of *T. cruzi* infection by detecting antibodies to *T. cruzi* in plasma and serum samples from individual human donors, including donors of Whole Blood and blood components intended for transfusion. The guidance recommends that establishments that manufacture Whole Blood and blood components intended for transfusion should notify consignees of all previously collected in-date blood and blood components to quarantine and return the blood components to establishments or to destroy them within 3 calendar days after a donor tests repeatedly reactive by a licensed test for *T. cruzi* antibody. When establishments identify a donor who is repeatedly reactive by a licensed test for *T. cruzi* and positive on a licensed

supplemental test, we recommend that the establishment notify consignees of all previously distributed blood and blood components collected during the lookback period and, if blood and blood components were transfused, encourage consignees to notify the recipient's physician of record of a possible increased risk of *T. cruzi* infection.

Respondents to this information collection are establishments that manufacture Whole Blood and blood components intended for transfusion. We believe that the information collection provisions in the guidance for establishments to notify consignees and for consignees to notify the recipient's physician of record in the guidance do not create a new burden for respondents and are part of usual and customary business practices. Since the end of January 2007, a number of blood centers representing a large proportion of U.S. blood collections have been testing donors using a licensed assay. We believe these establishments have already developed standard operating procedures for notifying consignees and for the consignees to notify the recipient's physician of record.

The guidance also refers to previously approved collections of information found in FDA regulations. The collections of information in 21 CFR 601.12 have been approved under OMB control number 0910–0338; the collections of information in 21 CFR 606.100, 606.121, 606.122, 606.160(b)(ix), 606.170(b), 610.40, and 630.6 have been approved under OMB control number 0910–0116; the collections of information in 21 CFR 606.171 have been approved under OMB control number 0910–0458.

Dated: November 1, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–26792 Filed 11–4–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Human Tissue Models For Infectious Diseases (U19).

Date: December 1–2, 2016.

Time: 8:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: The William F. Bolger Center, Stained Glass Hall, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Brenda Lange-Gustafson, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room # 3G41B National Institutes of Health/NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892–9823, (240) 669–5047, *bgustafson@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Clinical Trial Implementation Grant (R01).

Date: December 16, 2016.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Chelsea D. Boyd, Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, 5601 Fishers Lane, MSC–9823, Rockville, MD 20852–9834, 240–669–2081, *chelsea.boyd@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 1, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–26772 Filed 11–4–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Research Opportunities in Environmental Health Sciences (R21).

Date: November 21, 2016.

Time: 10:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Keystone Building, Room 3118, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: RoseAnne M. McGee, Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–0752, *mcgee1@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: November 1, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–26767 Filed 11–4–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Vascular Hematology.

Date: November 21, 2016.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Bukhtiar H. Shah, DVM, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7802, Bethesda, MD 20892, 301–806–7314, *shahb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Program Project: Cell Biology.

Date: November 29–30, 2016.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: David Balasundaram, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5189, MSC 7840, Bethesda, MD 20892, 301–435–1022, *balasundaramd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Stress and Drug Addiction Pharmacology.

Date: November 30, 2016.

Time: 1:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mary Custer, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20892, (301) 435–1164, *custerm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Virology.

Date: December 6, 2016.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Neerja Kaushik-Basu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892, (301) 435–2306, *kaushikbasun@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 1, 2016.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–26768 Filed 11–4–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The 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 contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Peer Review Meeting.

Date: November 22, 2016.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health 5601 Fishers Lane, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Eleazar Cohen, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room 3G62A, National Institute of Health, NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20899823, (240) 669–5081, *ecohen@niaid.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. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 1, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–26773 Filed 11–4–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Board on Medical Rehabilitation Research.

The meeting will be open to the public, 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.

Name of Committee: National Advisory Board on Medical Rehabilitation Research.

Date: December 5–6, 2016.

Time: December 5, 2016, 9:00 a.m. to 5:00 p.m.

Agenda: NICHD and NCMRR Director's reports; Clinical trials; Medical Rehabilitation Research Resources.

Place: Eunice Kennedy Shriver, National Institute of Child Health and Human Development, 6710B Rockledge Drive, Multipurpose Room 1425 & 1427, Bethesda, MD 20817.

Time: December 6, 2016, 9:00 a.m. to 12:00 p.m.

Agenda: Opportunities for Limb Loss Research; Opening the training pipeline.

Place: Eunice Kennedy Shriver. National Institute of Child Health and Human Development, 6710B Rockledge Drive, Multipurpose Room 1425 & 1427, Bethesda, MD 20817.

Contact Person: Ralph M. Nitkin, Ph.D., Deputy Director, National Center for Medical Rehabilitation Research (NCMRR), Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, DHHS, 6710B Rockledge Drive, Room 2116, MSC 7002, Bethesda, MD 20892, (301) 402–4206, *RN21e@nih.gov.*

Information is also available on the Institute's/Center's home page: *http://www.nichd.nih.gov/about/advisory/nabmrr/Pages/index.aspx* where the current roster and minutes from past meetings are posted.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: November 1, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–26774 Filed 11–4–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed 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: Center for Scientific Review Special Emphasis Panel; Ocular Surface and Cornea.

Date: November 7, 2016.

Time: 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Kristin Kramer, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5205, MSC 7846, Bethesda, MD 20892, (301) 437–0911, *kramerkm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 1, 2016.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–26769 Filed 11–4–16; 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 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 Cancer Institute Special Emphasis Panel; Physical Sciences-Oncology.

Date: January 27, 2017.

Time: 10:00 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 7W030, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Eduardo Emilio Chufan, Ph.D., Scientific Review Officer, Research Technology & Contract Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W254, Rockville, MD 20892–9750, 240–276–7975, *chufanee@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Program Project IV (P01).

Date: February 2–3, 2017.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814

Contact Person: Anita T. Tandle, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W248, Rockville, MD 20892–9750, 240–276–5085, *tandlea@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI SPORE I Review

Date: February 7–8, 2017.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Caron A. Lyman, Ph.D., Chief, Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W126, Rockville, MD 20892–9750 240–276–6348, *lymanc@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI SPORE II Review.

Date: February 8–9, 2017.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Wlodek Lopaczynski, MD, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W608, Rockville, MD 20892–9750, 240–276–6458, *lopacw@mail.nih.gov.*

Name of Committee: National Cancer Institute Initial Review Group; NCI Program Project III (P01).

Date: February 9–10, 2017.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Shakeel Ahmad, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W412, Rockville, MD 20892–9750,240–276–6349, *ahmads@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: November 1, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–26771 Filed 11–4–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2016–0204]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625–0118

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval for reinstatement without change of the following collection of information: 1625–0118, Various International

Agreement Certificates and Documents. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Comments must reach the Coast Guard and OIRA on or before December 7, 2016.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2016–0204] to the Coast Guard using the Federal eRulemaking Portal at *http://www.regulations.gov.* Alternatively, you may submit comments to OIRA using one of the following means:

(1) *Email: OIRA-submission@omb.eop.gov.*

(2) *Mail:* OIRA, 725 17th Street NW., Washington, DC 20503, attention Desk Officer for the Coast Guard.

(3) *Fax:* 202–395–6566. To ensure your comments are received in a timely manner, mark the fax, attention Desk Officer for the Coast Guard.

A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: COMMANDANT (CG–612), ATTN: PAPERWORK REDUCTION ACT MANAGER, U.S. COAST GUARD, 2703 MARTIN LUTHER KING JR AVE SE., STOP 7710, WASHINGTON, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection. The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2016–0204], and must be received by December 7, 2016.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

OIRA posts its decisions on ICRs online at *http://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0118.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (81 FR 21370, April 11, 2016) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments. Accordingly, no changes have been made to the Collections.

Information Collection Request

Title: Various International Agreement Certificates and Documents.

OMB Control Number: 1625–0118.

Summary: This information collection is associated with the Maritime Labour Convention (MLC), 2006. The Coast Guard established a voluntary inspection program for vessels who wish to document compliance with the requirements of the MLC. U.S. commercial vessels that operate on international routes are eligible to participate. The Coast Guard issues voluntary compliance certificates as proof of compliance with the MLC.

Need: This information is needed to determine if a vessel is in compliance with the Maritime Labour Convention, 2006.

Forms: CG–16450, Maritime Labour Certificate; CG–16450A, Interim Maritime Labour Certificate; CG–16450B, Declaration of Maritime Labour Compliance—Part I and CG–16450C, U.S. Coast Guard Maritime Labour Convention, 2006 Inspection Report.

Respondents: Vessel owners and operators.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has decreased from 4,150 hours a year to 625 hours a year due to a decrease in the estimated number of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: October 27, 2016.

Brian P. Burns,

Deputy Chief Information Officer, U.S. Coast Guard.

[FR Doc. 2016–26871 Filed 11–4–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2016–0086]

DHS Data Privacy and Integrity Advisory Committee

AGENCY: Privacy Office, DHS.

ACTION: Notice; correction.

SUMMARY: The notice of the meeting of the DHS Data Privacy and Integrity Advisory Committee published in the **Federal Register** of November 1, 2016, 81 FR 73835 contained an incorrect meeting date. The correct date is Monday, December 5, 2016.

DATES: Effective November 7, 2016.

FOR FURTHER INFORMATION CONTACT: Sandra Taylor, Designated Federal

Officer, DHS Data Privacy and Integrity Advisory Committee, Department of Homeland Security, 245 Murray Lane SW., Mail Stop 0655, Washington, DC 20528, by telephone (202) 343–1717, by fax (202) 343–4010, or by email to *PrivacyCommittee@hq.dhs.gov.*

SUPPLEMENTARY INFORMATION: The DHS Data Privacy and Integrity Advisory Committee published a meeting notice in the **Federal Register** of November 1, 2016, at 81 FR 75835. In document number 2016–26275, make the following correction to the dates in the following sections. On page 81 FR 75835 in the first column, the **SUMMARY** section should read ''The DHS Data Privacy and Integrity Advisory Committee will meet on Monday, December 5, 2016. In the **DATES** section, also in the first column, the text should read, The DHS Data Privacy and Integrity Advisory Committee will meet on Monday, December 5, 2016, from 9:00 a.m. to 12:30 p.m.

Dated: November 1, 2016.

Jonathan R. Cantor,

Acting Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2016–26765 Filed 11–4–16; 8:45 am]

BILLING CODE 9110–9L–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5909–N–75]

30-Day Notice of Proposed Information Collection: Training Evaluation Form

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: Comments Due Date: December 7, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on August 19, 2016 at FR 81 FR 55470.

A. Overview of Information Collection

Title of Information Collection: Training Evaluation Form.

OMB Approval Number: 2577–0271.

Type of Request: Revision of currently approved collection.

Form Number: HUD 50945.

Description of the need for the information and proposed use: Executive Order 13571, ''Streamlining Service Delivery and Improving Customer Service,'' issued on April 27, 2011, states ''The public deserves competent, efficient, and responsive service from the Federal Government. Executive departments and agencies (agencies) must continuously evaluate their performance in meeting this standard and work to improve it.'' Executive Order 12862 ''Setting Customer Service Standards,'' issued on September 11, 1993, requires agencies that provide significant services directly to the public to identify and survey their customers, establish service standards and track performance against those standards, and benchmark customer service performance against the best in business.

To that end, the Office of Public and Indian Housing (PIH) will use a standardized training assessment instrument to evaluate learners' reactions to training or technical assistance programs. With the information collected, PIH will measure, evaluate, and compare the performance of its various training programs over time. The design of this form follows industry-accepted best practices, allowing additional comparisons to other training programs in business and government.

Examples of how the Training Evaluation Form is currently being used and will be used are: To inspect HUD insured and assisted properties, prospective contract inspectors are required to successfully complete HUD Uniform Physical Condition Standards (UPCS) inspection training. The training consists of a pre-requisite computer-based component followed by an instructor-led component, each of which is evaluated using the Training Evaluation Form. To become familiar with the UPCS inspection process and requirements, thereby facilitating and enhancing maintenance of properties and preparation for upcoming contract inspections, public housing agency (PHA) employees and multifamily property owners and agents (POAs) are able to take a computer-based UPCS training, which is also evaluated using the Training Evaluation Form.

PIH proposes to use the training form in the future to evaluate training offered to contract inspectors who will be conducting Uniform Physical Condition Standards-Voucher (UPCS–V) inspections of 2.2 million Section 8 Housing Choice Voucher units.

PIH also proposes to use the training form in the future for all other training offered to PIH program participants and stakeholders on major regulatory changes. These sessions may be held as technical assistance seminars, conferences, briefings, or online webinars.

Respondents (*i.e.,* affected public): The training evaluation form will be completed by members of the public and individuals at state and local government entities who participate in a HUD training course.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Training Eval. Form	64,590	1	64,590	.033	2,131.47	$24.83	$52,924.40
Total	64,590	1	64,590	.033	2,131.47	24.83	52,924.40

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond: Including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: October 28, 2016.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2016–26870 Filed 11–4–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5962–N–02]

Fair Market Rents for the Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program Fiscal Year 2017; Revised

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of Fiscal Year (FY) 2017 Fair Market Rents (FMRs), Update.

SUMMARY: Today's notice updates the FY 2017 Small Area FMRs (SAFMRs) for Dallas, TX HUD Metro FMR Area (HMFA) based on a review of data for certain ZIP Codes as requested in the comment submitted by Inclusive Communities Project, Inc., in compliance with the *Guidance For Preparing Comments on Small Area FMRs.* The revised FY 2017 SAFMRs in the Dallas, TX, HMFA are available in a newly-posted Schedule B Addendum at *https://www.huduser.gov/portal/datasets/fmr.html.* They use the same bedroom ratios as the FY 2017 SAFMRs effective October 1, 2016, and are also trended to April 1, 2017.

DATES: *Effective Date:* The SAFMRs published in this notice are effective on December 7, 2016.

FOR FURTHER INFORMATION CONTACT: For technical information on the methodology used to develop SAFMRs or a listing of all hypothetical SAFMRs, please call the HUD USER information line at 800–245–2691 or access the information on the HUD USER Web site: *https://www.huduser.gov/portal/datasets/fmr/smallarea/index.html.* The Dallas, TX, HMFA SAFMRs are also provided in the HUD FY 2017 FMR documentation system at *https://www.huduser.gov/portal/datasets/fmr/fmrs/docsys.html?data=fmr17.*

Questions related to use of FMRs should be directed to the respective local HUD program staff. Questions on how to conduct FMR surveys or concerning further methodological explanations may be addressed to Marie L. Lihn or Peter B. Kahn, Economic and Market Analysis Division, Office of Economic Affairs, Office of Policy Development and Research, telephone 202–402–2409. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339. (Other than the HUD USER information line and TDD numbers, telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The revised SAFMRs supersede the values found in Schedule B Addendum that became effective on October 1, 2016. Revised SAFMRS in Schedule B Addendum are posted on the HUD User Web site at: *https://www.huduser.gov/portal/datasets/fmr.html.* The revised ZIP Codes are indicated by '(r)' after the five-digit code.

Dated: October 31, 2016.

Katherine M. O'Regan,

Assistant Secretary for Policy Development & Research.

[FR Doc. 2016–26874 Filed 11–4–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5932–N–06]

Agenda and Notice of Public Meeting of the Moving to Work Research Advisory Committee

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, and Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of a federal advisory committee meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the Moving to Work (MTW) Research Advisory Committee (Committee). The Committee meeting will be held via conference call on Tuesday, December 13, 2016. The meeting is open to the public and is accessible to individuals with disabilities.

DATES: The teleconference meeting will be held on December 13, 2016, from 1:00 p.m. to 4:00 p.m. Eastern Standard Time (EST).

FOR FURTHER INFORMATION CONTACT: Eva Fontheim, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4130, Washington, DC 20410, telephone (202) 402–3461 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Relay Service at (800) 877–8339 or can email: *MTWAdvisoryCommittee@hud.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with the Federal Advisory Committee Act, 5. U.S.C. App. 10(a)(2). The Committee was established on May 2, 2016, to advise HUD on specific policy proposals and methods of research and evaluation related to the expansion of the MTW demonstration to an additional 100 high-performing Public Housing Authorities (PHAs). See 81 FR 24630. On July 26 and 28, 2016, HUD convened two conference call meetings of the Committee followed by a two-day in-person meeting on September 1 and 2, 2016. The minutes of these meetings are available on the HUD Web site at: *http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/mtw/expansion.*

HUD is now convening a 3-hour conference call to continue the discussion from the September meeting. HUD will convene the meeting on Tuesday, December 13, 2016, via teleconference from 1:00 p.m. to 4:00 p.m. (EST). The agenda for the meeting is as follows:

Tuesday, December 13, 2016 From 1–4 p.m. EST

I. Welcome and Introductions
II. Summary of July and September Meetings
III. Goal for this Meeting
  a. Continue discussion and provide

recommendations on whether to study mobility and/or place-based models through a cohort of the 100-agency MTW Expansion
b. Revisit Guiding Principles
IV. Policy Framework and Research Methodology—MTW Statutory Objective #3: Increasing Housing Choice
a. Strategies to Encourage Participant Mobility
V. BREAK
VI. Policy Framework and Research Methodology—MTW Statutory Objective #3: Increasing Housing Choice (continued)
a. Place-Based Strategies as a platform for health and educational outcomes
VII. Public Input
VIII. Summary of Discussion
IX. Discuss Next Steps and Adjourn

The public is invited to call-in to the meeting by using the following Conference Toll-Free Number in the United States: 1–800–230–1074 or the following International number for those outside the United States: (612) 234–9960. Please be advised that the operator will ask callers to provide their names and their organizational affiliations (if any) prior to placing callers into the conference line. Callers can expect to incur charges for calls they initiate over wireless lines and for international calls, and HUD will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free phone number. Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service (FRS) at 1–800–877–8339 and providing the FRS operator with the Conference Call Toll-Free Number: 1–800–230–1074.

With advance registration, members of the public will have an opportunity to provide feedback during the call. The total amount of time for such feedback will be limited to ensure pertinent Committee business is completed. Further, the amount of time allotted to each individual commenter will be limited and will be allocated on a first-come first-served basis by HUD. If the number of registered commenters exceeds the available time, HUD may ask for the submission of comments via email. In order to pre-register to provide comments, please visit the MTW Demonstration's registration page: *https://www.huduser.gov/portal/event/moving-to-work-expansion-dec2016.html.*

Records and documents discussed during the meeting, as well as other information about the work of this Committee, will be available for public viewing as they become available at: *http://www.facadatabase.gov/committee/committee.aspx?t=c&cid=2570&aid=77* by clicking on the ''Committee Meetings'' link.

These materials will also be available on the MTW Demonstration's expansion Web page at: *http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/mtw/expansion.* Records generated from this meeting may also be inspected and reproduced at the Department of Housing and Urban Development Headquarters in Washington, DC, as they become available, both before and after the meeting.

Outside of the work of this Committee, information about HUD's broader implementation of the MTW expansion, as well as additional opportunities for public input, can be found on the MTW Demonstration's expansion Web page at: *http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/mtw/expansion.*

Dated: October 24, 2016.

Lourdes Castro Ramírez,

Principal Deputy Assistant, Secretary for Public and Indian Housing.

Katherine M. O'Regan,

Assistant Secretary for Policy Development and Research.

[FR Doc. 2016–26872 Filed 11–4–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[178A2100DD/AAKC001030/A0A501010.999900 253G]

Proclaiming Certain Lands as Reservation for the Confederated Tribes of the Chehalis Reservation

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice informs the public that the Principal Deputy Assistant Secretary—Indian Affairs proclaimed approximately 359.11 acres, more or less, an addition to the reservation of the Confederated Tribes of the Chehalis Reservation of Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Sharlene Round Face, Bureau of Indian Affairs, Division of Real Estate Services, 1849 C Street NW., MS–4642–MIB, Washington, DC 20240, telephone (202) 208–3615.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by part 209 of the Departmental Manual.

A proclamation was issued according to the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 5110) for the lands described below. These lands are proclaimed to be part of the Confederated Tribes of the Chehalis Reservation, in Grays Harbor County and Thurston County, Washington.

Willamette Meridian

Grays Harbor County and Thurston County, Washington

Legal Description Containing 359.11 Acres, More or Less

Bale Parcel

That portion of the Southeast Quarter of the Northeast Quarter AND of the Northeast Quarter of the Southeast Quarter of Section 32, Township 16 North, Range 4 West of the Willamette Meridian, described as follows:

Commencing at a point 26 chains and 64 links North of the Southeast corner of Section 32, said Township and Range, which point is identical with the Southeast corner of the Roundtree Donation Land Claim No. 39;

Thence running North on the Section line between Sections 32 and 33, 27 chains and 40 links;

Thence West 18 chains and 25 links; Thence South 9 chains and 99 links;

Thence North 84° West 2 chains and 4 links;

Thence South 17 chains and 10 links, more or less, to the South line of The Roundtree Donation Land Claim No. 39;

Thence East 20 chains and 31 links to the point of beginning;

EXCEPT that portion lying North of the Elma-Gate Road; ALSO EXCEPT Elma-Gate Road and Howanut Road; Situated in the County of Grays Harbor, State of Washington. Containing 27.92 acres, more or less.

Porter Parcel

PARCEL A: Government Lots 8, 9, 10 and that portion of Government Lot 11 lying Easterly of a certain unnamed slough: Situate in Section 28, Township 17 North, Range 5 West of the Willamette Meridian; Situate in the County of Grays Harbor, State of Washington.

PARCEL A–1: A perpetual non-exclusive easement 30 feet in width for ingress and egress over, under and across a portion of Government Lot 11 in Section 28, Township 17 North, Range 5 West of the Willamette

Meridian, as disclosed by document recorded August 30, 1984, under Auditor's File No. 840830001, records of Grays Harbor County; Situated in the County of Grays Harbor, State of Washington.

PARCEL B: Government Lot 12 and Government Lot 13; AND the Southwest Quarter of the Southwest Quarter East of South Bank County Road;

EXCEPT that portion conveyed to Sharon Grange No. 800, Patrons of Husbandry, by Quit Claim Deed, recorded January 2, 1953, under Auditor's File No. 557826, more particularly described as follows:

Beginning at a point where the North line of the Southwest Quarter of the Southwest Quarter intersects the East line of the County Road;

Thence Northwesterly along the East line of said road 170 feet;

Thence East 334 feet;

Thence South 272 feet;

Thence West 212 feet, more or less, to the East line of said County Road;

Thence Northwesterly along said East line 127 feet, more or less, to the point of beginning; (Also known as the Sharon Cemetery); Situated in Section 28, Township 17 North, Range 5 West of the Willamette Meridian;

ALSO EXCEPT a portion of the Southwest Quarter of the Southwest Quarter of Section 28, Township 17 North, Range 5 West of the Willamette Meridian, described as follows:

Commencing at the intersection of the North line of said Southwest quarter and the East line of South Bank County Road and the true point of beginning;

Thence South 87°07′28″ East along said line a distance of 276.95 feet;

Thence South 2°52′33″ West a distance of 146.38 feet;

Thence North 87°07′27″ West a distance of 201.39 feet to the East line of said road;

Thence Northwesterly along said line a distance of 164.73 feet to the true point of beginning;

EXCEPT that portion of Sharon Cemetery conveyed under Quit Claim Deed recorded January 2, 1953, under Auditor's File No. 557826 lying in said Southwest Quarter;

Situated in the County of Grays Harbor, State of Washington.

PARCEL C: The North Half of Government Lot 3, And the North Half of the Northeast Quarter of the Northwest Quarter in Section 33, Township 17 North, Range 5 West of the Willamette Meridian;

EXCEPT the Southerly 50 feet thereof; ALSO EXCEPT South Bank County Road;

Situated in the County of Grays Harbor, State of Washington. Containing 158.41 acres, more or less.

Pearson Road Parcel

Parcel Number 160434320080—Lot 3 of that certain Short Subdivision Application SSA No. 77–5 in Volume 2 of Short Plats, pages 18 and 19, recorded January 31, 1978, under Auditor's File No. 119666, records of Grays Harbor County;

(Being a portion of the Northwest Quarter of the Southwest Quarter of Section 34, Township 16 North, Range 4 West of the Willamette Meridian);

Except that portion conveyed to Grays Harbor County for right-of-way as disclosed by Microfilm No. 78 02095, records of Grays Harbor County; Situated in the County of Grays Harbor, State of Washington. Containing 1.96 acres, more or less.

Parcel Number 160434320010—Lot 1 of that certain Short Subdivision Application SSA No. 77–5 in Volume 2 of Short Plats, pages 18 and 19, recorded January 31, 1978, under Auditor's File 119666, records of Grays Harbor County; (Being a portion of the Northwest Quarter of the Southwest Quarter of Section 34, Township 16 North, Range 4 West of the Willamette Meridian).

Situated in the County of Grays Harbor, State of Washington. Containing 9.96 acres, more or less.

Parcel Number 160433410020—That portion of the Northeast Quarter of the Southeast Quarter of Section 33, Township 16 North, Range 4 West of the Willamette Meridian, lying South of State Highway No. 12;

TOGETHER WITH that portion of the Southeast Quarter of the Southeast Quarter of said Section 33 described as follows:

Beginning at the Southeast corner of said Northeast Quarter of the Southeast Quarter;

Thence South 89°24′34″ West along the South line of said Northeast Quarter of the Southeast Quarter a distance of 553.44 feet;

Thence South 58°17′13″ East a distance of 654.93 feet;

Thence North 00°36′38″ West along East line of said Section 33 a distance of 75.79 feet;

Thence South 89°35′59″ West a distance of 100.00 feet;

Thence North 00°36′38″ West a distance of 217.80 feet;

Thence North 89°35′59″ East a distance of 100.00 feet to the East line of said Section 33;

Thence North 00°36′38″ West a distance of 56.41 feet to the point of beginning;

EXCEPT that portion thereof lying West of Black River, AND EXCEPT County Road;

ALSO EXCEPTING THEREFROM that portion of the Northeast Quarter of the Southeast Quarter of said Section 33 described as follows:

Beginning at the Southwest corner of said Northeast Quarter of the Southeast Quarter;

Thence North 89°24′34″ East along the South line of said Northeast Quarter of the Southeast Quarter a distance of 775.66 feet;

Thence North 58°17′13″ West a distance of 916.40 feet to the West line of said Northeast Quarter of the Southeast Quarter;

Thence South 00°27′46″ East along the West line of said Northeast Quarter of the Southeast Quarter a distance of 489.73 feet to the point of beginning;

(Also known as Parcel A of Boundary Line Adjustment recorded April 29, 2008, under Auditor's File No. 2008–04290002, records of Grays Harbor County); Situated in the County of Grays Harbor, State of Washington. Containing 30.64 acres, more or less.

Parcel Number 160433440010—The Southeast Quarter of the Southeast Quarter in Section 33, Township 16 North, Range 4 West of the Willamette Meridian, lying Easterly of the Black River;

ALSO that portion of the Southeast Quarter of the Southwest Quarter of the Southeast Quarter lying South and East of Black River in Section 33, Township 16 North, Range 4 West of the Willamette Meridian;

ALL Situated in the County of Grays Harbor, State of Washington.

TOGETHER WITH that portion of the Northeast Quarter of the Southeast Quarter of said Section 33 described as follows:

Beginning at the Southwest corner of said Northeast Quarter of the Southeast Quarter;

Thence North 89°24′34″ East along the South line of said Northeast Quarter of the Southeast Quarter a distance of 775.66 feet;

Thence North 58°17′13″ West a distance of 916.40 feet to the West line of said Northeast Quarter of the Southeast Quarter;

Thence South 00°27′46″ East along the West line of said Northeast Quarter of the Southeast Quarter a distance of 489.73 feet to the point of beginning;

EXCEPT the East 100 feet of the North 217.8 feet of the South 1,270 feet thereof; ALSO EXCEPT Road;

ALSO EXCEPTING THEREFROM that portion of the Southeast Quarter of the Southeast Quarter of said Section 33 described as follows;

Beginning at the Southeast corner of said Northeast Quarter of the Southeast Quarter;

Thence South 89°24′34″ West along the South line of said Northeast Quarter

of the Southeast Quarter a distance of 553.44 feet;

Thence South 58°17′13″ East a distance of 654.93 feet;

Thence North 00°36′38″ West along East line of said Section 33 a distance of 75.79 feet;

Thence South 89°35′59″ West a distance of 100.00 feet;

Thence North 00°36′38″ West a distance of 217.80 feet;

Thence North 89°35′59″ East a distance of 100.00 feet to the East line of said Section 33;

Thence North 00°36′38″ West a distance of 56.41 feet to the point of beginning;

(Also known as Parcel B of Boundary Line Adjustment recorded April 29, 2008, under Auditor's File No. 2008–04290002, records of Grays Harbor County); Situated in the County of Grays Harbor, State of Washington. Containing 39.07 acres, more or less. Totaling 81.63 acres, more or less.

Mae Palmer Parcel

A tract of land beginning at the Northwest corner of the Southeast Quarter of the Southwest Quarter of the Southwest Quarter of Section 30, Township 16 North, Range 4 West of the Willamette Meridian;

Thence Easterly along the North line of said Southeast Quarter of the Southwest Quarter of the Southwest Quarter of said Section a distance of 13 ⅓ Rods;

Thence South 24 Rods;

Thence West 13 ⅓ Rods to a point on the West line of the said Southeast Quarter;

Thence North along said West line 24 Rods to the place of beginning;

EXCEPT: Commencing at the Southwest corner of said North 24 rods of the Southeast Quarter of the Southwest Quarter of the Southwest Quarter, Section 30, Township 16 North, Range 4 West of the Willamette Meridian;

Thence South 89°24′04″ East along the South line a distance of 194.86 feet to the true point of beginning;

Thence North 44°47′25″ East a distance of 35.72 feet;

Thence South 00°07′39″ West a distance of 25.09 feet;

Thence North 89°24′04″ West a distance of 25.11 feet to the true point of beginning;

Situated in the County of Grays Harbor, State of Washington. Containing 1.99 acres, more or less.

Washington Business Bank Parcel

That part of the East half of the Southeast Quarter of Section 35, Township 16 North, Range 4 West, W.M., lying southerly of Primary State Highway No. 9;

EXCEPTING THEREFROM tract described as beginning at the intersection of the southerly line of said Primary State Highway No. 9 with the east line of said Section and running thence south along said east line 235 feet, more or less, to a point 200 feet south of the Northeast corner of the southeast quarter of said southeast quarter,

Thence west 160 feet and north 250 feet, more or less, to said southerly line of highway and thence southeasterly along said southerly line of highway to the point of beginning of this exception;

AND EXCEPTING Moon Road and Tapio Road (183rd Avenue); ALSO EXCEPTING that portion conveyed to the State of Washington in Deed recorded March 31, 1999, under Auditor's File No. 3221252 and those portions conveyed to Thurston County by Deeds recorded October 10, 2002, and August 12, 2003, under respective Auditor's File Nos. 3468517 and 3562206. Situated in Thurston County, Washington. Containing 40.80 acres, more or less.

Andrews Parcel

Tract 12 and that part of Tract 9 of Farmdale Addition to Gate City, as recorded in Volume 6 of Plats, page 19, lying South of Rochester Grand Mound Highway;

TOGETHER WITH vacated street lying between said tracts and that part of vacated street adjoining Tract 9 on the East. In Thurston County, Washington.

Containing 48.36 acres, more or less.

The above-described lands contain a total of 359.11 acres, more or less, which are subject to all valid rights, reservations, rights-of-way, and easements of record.

This proclamation does not affect title to the lands described above, nor does it affect any valid existing easements for public roads and highways, public utilities and for railroads and pipelines, and any other valid easements or rights-of-way or reservations of record.

Dated: October 28, 2016.

Lawrence S. Roberts,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 2016–26858 Filed 11–4–16; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[178A2100DD/AAKC001030/A0A501010.999900 253G]

Proclaiming Certain Lands as Reservation for the Confederated Tribes of the Chehalis Reservation of Washington

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Reservation Proclamation.

SUMMARY: This notice informs the public that the Assistant Secretary—Indian Affairs proclaimed approximately 24.76 acres, more or less, an addition to the reservation of the Confederated Tribes of the Chehalis Reservation.

FOR FURTHER INFORMATION CONTACT: Sharlene M. Round Face, Bureau of Indian Affairs, Division of Real Estate Services, 1849 C Street NW., MS–4642–MIB, Washington, DC 20240, telephone (202) 208–3615.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by part 209 of the Departmental Manual.

A proclamation was issued according to section 7 of the Act of June 18, 1934 (48 Stat. 984) for the lands described below. The land was proclaimed to be an addition to the Chehalis Reservation for the Confederated Tribes of the Chehalis Reservation, Thurston County and State of Washington.

Willamette Meridian

Thurston County, Washington, 5 Parcels

Legal Description Containing 24.76 Acres, More or Less

Bricker Eagle 1 Parcel (157–T–1198)

Lot B of Boundary Line Adjustment No. BLA–0397 as recorded August 21, 1986, under Auditor's File No. 8608210025 and as amended by instruments recorded February 18, 2011, under Auditor's File Nos. 4198844 and 4198845; EXCEPT that portion conveyed to the State of Washington, Department of Transportation, by deeds recorded October 9, 2009, under Auditor's File Nos. 4115371, 4115372 and 4115373.

Situated in Thurston County, Washington. Containing 7.06 acres, more or less.

Prairie Creek Parcel (157–T–1222)

Tract 25 of Grand Valley Fruit & Garden Tracts as recorded in Volume 8

of Plats, page 100. EXCEPT that portion conveyed to Thurston County by deed recorded May 28, 1998, under Auditor's File No. 3156361. Situated in the Southwest quarter of the Southwest quarter of Section 12, Township 15 North, Range 3 West, Willamette Meridian.

Situated in Thurston County, State of Washington. Containing 3.73 acres, more or less.

Eagle 2 Parcel (157–T–1223)

Tract 40 of Jacksons Meadow Tracts, as recorded in Volume 8 of Plats, page 67; EXCEPTING THEREFROM Primary State Highway No. 9 along the North boundary; ALSO EXCEPTING the South 220 feet thereof, located in the Southeast Quarter of the Northeast Quarter of Section 11, Township 15 North, Range 3 West, Willamette Meridian.

Situated in Thurston County, State of Washington. Containing 2.67 acres, more or less.

So Parcel (157–T–1224)

The South 185 feet of Tract 23 of Jackson Fruit Tracts, as recorded in Volume 8 of Plats, page 54; EXCEPTING THEREFROM the East 122.2 feet; AND EXCEPTING ALSO the South 15 feet for county road known as First Street (198th Avenue SW). All found in Section 11, Township 15 North, Range 3 West of the Willamette Meridian.

Situated in the County of Thurston, State of Washington. Containing 0.76 acre, more or less.

Mound Parcel (157–T–1225)

Lot 1 of Short Subdivision No. SS962868TC, as recorded January 14, 1998, under Auditor's File No. 3129810 located in the SE ¼ of Section 10 and the SW ¼ of Section 11, Township 15 North, Range 3 West, Willamette Meridian.

Situated in Thurston County, Washington. Containing 10.54 acres, more or less.

The above described lands contain a total of 24.76 acres, more or less, which are subject to all valid rights, reservations, rights-of-way, and easements of record.

This proclamation does not affect title to the lands described above, nor does it affect any valid existing easements for public roads, highways, public utilities, railroads, and pipelines or any other valid easements or rights-of-way or reservations of record.

Dated: October 28, 2016.

Lawrence S. Roberts,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 2016–26853 Filed 11–4–16; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORC01000. L63100000. HD0000.17XL1116AF; HAG 17–0028]

Notice of Public Meeting for the Coastal Oregon 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, and the U.S. Department of the Interior, Bureau of Land Management (BLM), the Coastal Oregon Resource Advisory Council (RAC) will meet as indicated below:

DATES: The Coastal Oregon RAC will hold a public meeting Wednesday, November 9, 2016, from 9:00 a.m. to 4:30 p.m. and Thursday, November 10, 2016 from 8:00 a.m. to 1:00 p.m.

ADDRESSES: The Coastal Oregon RAC will meet at the Coos Bay District Office, 1300 Airport Lane, North Bend, Oregon 97459.

FOR FURTHER INFORMATION CONTACT: Megan Harper, Public Affairs Specialist, BLM Coos Bay District Office, 1300 Airport Lane, North Bend, Oregon 97459, (541) 751–4353, or email *m1harper@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, 7 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 Coastal Oregon RAC consists of 15 members chartered and appointed by the Secretary of the Interior. Their diverse perspectives are represented in commodity, conservation, and general interests. They provide advice to BLM resource managers regarding management plans and proposed resource actions on public land in coastal Oregon. Tentative agenda items for the November 9 and November 10, 2016, meeting include an overview of the BLM's implementation of the Coastal and Northwestern Oregon Resource Management Plan and a field trip to the Coos Bay Wagon Road Pilot timber sale.

A public comment period will be available on November 9, 2016 at 2:15 p.m. Unless otherwise approved by the Coastal Oregon RAC Chair, the public comment period will last no longer than 30 minutes, and each speaker may address the Coastal Oregon RAC for a maximum of 5 minutes. Meeting times and the duration scheduled for public comment periods may be extended or altered when the authorized representative considers it necessary to accommodate necessary business and all who seek to be heard regarding matters before the Coastal Oregon RAC.

Before including your address, phone number, email address, or other personal identifying information in your comments, please be aware that your entire comment–including your personal identifying information–may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: October 28, 2016.

Patricia Burke,

Coos Bay District Manager.

[FR Doc. 2016–26811 Filed 11–4–16; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCOF02000 L12200000.ID0000–16X]

Road Closure and Restrictions on Public Lands in Fremont County, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that a two-year motor vehicle closure is in effect for a one-quarter mile section of the Point Barr Road (BLM 5969), located on public lands managed by the Bureau of Land Management (BLM) Royal Gorge Field Office. The motorized vehicle road closure is needed to protect the public and property due to unsafe road conditions. The public is permitted to use this road during the closure period without the use of a motorized vehicle. Access by foot, horse or bicycle travel is allowed. Heavy rains and flash flooding in late summer 2015 caused a constructed road retention wall to fail, making this and other portions of the road unsafe for motorized vehicle traffic.

DATES: This closure order will be in effect on November 7, 2016 and will remain in effect until November 7, 2018, unless otherwise rescinded or modified by the authorized officer or designated Federal officer.

FOR FURTHER INFORMATION CONTACT: Keith E. Berger, Royal Gorge Field Office Manager, at 3028 East Main Street, Cañon City, Colorado, 81212, or telephone 719–539–8500. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 1–800–877–8339 to contact Mr. Berger. The Service is available 24 hours a day, seven days a week, to leave a message or question with Mr. Berger. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This closure affects a one-quarter mile road segment that provides access to the Point Barr Recreation Area located in Fremont County, Colorado, approximately 10 miles east of Salida, Colorado. The road affected by this closure is found in:

New Mexico Principal Meridian, Fremont County, Colorado

T. 49 N., R. 10 E.,
Sec. 28, lot 6.

The road closure will remain effective until November 7, 2018, unless otherwise rescinded or modified by the authorized officer or designated Federal officer. The BLM will post closure signs alerting the public that the road is closed to motorized vehicles at the main entry points of the closed road. This notice, maps of the affected area, and associated documents will also be posted in the BLM Royal Gorge Field Office, 3028 East Main Street, Cañon City, Colorado, 81212.

Exemptions: The following persons are exempt from this order:

- Federal, State, and local officers and employees operating in the scope of their official duties;
- Members of organized rescue or fire-fighting forces in the performance of their official duties; and
- Any person authorized in writing by the BLM.

Penalties: Any person who violates this closure may be tried before a United States Magistrate and fined in accordance with 18 U.S.C. 3571, imprisoned no more than 12 months under 43 U.S.C. 1733(a) and 43 CFR 8360.0–7, or both. In accordance with 43 CFR 8365.1–7, State or local officials may also impose penalties for violations of Colorado law.

Authority: 43 CFR 8364.1.

Ruth Welch,
BLM Colorado State Director.

[FR Doc. 2016–26819 Filed 11–4–16; 8:45 am]
BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAN01100 L16100000.DO0000 16X LXSSB0220000]

Notice of Intent To Prepare a Resource Management Plan for the Redding and Arcata Field Offices and an Associated Environmental Impact Statement, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Redding and Arcata Field Offices intend to prepare a Resource Management Plan (RMP) known as the Northwest California Integrated Resource Management Plan with an associated Environmental Impact Statement (EIS). This notice announces the beginning of the scoping process to solicit public comments and identify issues. The RMP will replace the existing Redding Resource Management Plan (1993) and Arcata Resource Area Resource Management Plan (1992).

DATES: This notice initiates the public scoping process for the RMP with the associated EIS. Comments on issues may be submitted in writing until December 7, 2016 or until 15 days after the last public meeting, whichever is later. The dates and locations of scoping meetings will be announced at least 15 days in advance through local media, newspapers and the BLM Web site at: *https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=renderDefaultPlanOrProjectSite&projectId=63960.* In order to be included in the Draft EIS, all comments must be received prior to the close of the 30-day scoping period or 15 days after the last public meeting, whichever is later. We will provide additional opportunities for public participation upon publication of the Draft EIS.

ADDRESSES: You may submit comments on issues and planning criteria related to the Northwest California Integrated Resource Management Plan by any of the following methods:

- *Web site: http://www.blm.gov/ca/st/en/fo/redding/redding_rmp.html.*
- *Email: NCIP_comments@aecom.com.*
- *Fax:* (530) 224–2172.
- *Mail:* NCIP Comments, Bureau of Land Management, Redding Field Office, 6640 Lockheed Drive, Redding, California 96002.

Documents pertinent to this proposal may be examined at the BLM Redding Field Office.

FOR FURTHER INFORMATION CONTACT: Lisa Grudzinski, Planning and Environmental Specialist; telephone (530) 224–2140; address Bureau of Land Management, Redding Field Office, 6640 Lockheed Drive, Redding, California 96002; email *lgrudzinski@blm.gov.* Contact Ms. Grudzinski to add your name to our mailing list. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at (800) 877–8339 to contact the above individual during normal business hours. The Service is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This document provides notice that the BLM intends to prepare an RMP with an associated EIS for the Redding and Arcata Field Offices, announces the beginning of the scoping process, and seeks public input on issues and planning criteria. The planning area is located in Del Norte, Humboldt, Mendocino, Trinity, Siskiyou, Shasta, Tehama, and Butte Counties, California, and encompasses 396,000 surface acres of public land and 299,000 subsurface (mineral) acres. The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including but not limited to alternatives and potential expanded or new Areas of Critical Environmental Concern (ACECs). Preliminary issues for the planning area have been identified by the BLM; Federal, State, and local agencies; and other stakeholders. The issues include: Recreation; Fish and Wildlife; Soil and Water; Forestry, Livestock Grazing; Wilderness; Cultural Resources; Vegetation; ACECs and how the RMP should address the Northwest Forest Plan (USDA/USDI 1994). Preliminary planning criteria include:

1. Opportunities for public participation, which will be encouraged throughout the planning process. Increased public participation, which will also be encouraged through pre-planning and alternatives outreach.

2. Valid existing rights will be recognized and protected.

3. The BLM will work cooperatively with State and Federal agencies, Tribes, and local governments.

4. Plans and policies of adjacent conservation system units, landowners, and local governments will be considered, and RMP decisions will be consistent to the degree reasonably practical.

5. The RMP will conform to the Bureau's H–1601–1 Land Use Planning Handbook, Appendix C, Program-Specific and Resource-Specific Decision Guidance and all applicable BLM manuals and handbooks.

6. The plan will be consistent with the standards and guidance set forth in the Federal Land Policy and Management Act, National Environmental Policy Act, Council on Environmental Quality, National Historic Preservation Act, Wild and Scenic Rivers Act, Migratory Bird Treaty Act, Minerals Leasing Act, Memorandum of Understanding Among the U.S. Department of Agriculture, U.S. Department of the Interior, and U.S. Environmental Protection Agency, Regarding Air Quality Analyses and Mitigation for Federal Oil and Gas Decisions Through the National Environmental Policy Act Process, and other Federal laws, regulations and policies as required.

7. Designations for off-highway vehicles for all BLM-managed lands within the planning area will be completed according to the regulations found in 43 CFR 8342.

8. Visitor and community assessments will be conducted in compliance with the Recreation and Visitor Services Handbook to determine recreational demand and user preferences.

9. Current and potentially new special management areas, such as ACECs and Research Natural Areas (RNAs) will be considered using the criteria found in 43 CFR 1610.7–2.

10. Review and classification of waterways as eligible for inclusion in the National Wild and Scenic River (WSR) System will follow the guidance found in BLM's 6400 Manual. The BLM will review and update existing eligibility and classification inventories and make determinations on suitability or non-suitability of all eligible segments as potential additions to the National WSR System.

11. BLM will incorporate Environmental Justice (EJ) considerations in land use planning alternatives to adequately respond to EJ issues facing minority populations, low-income communities, and Native American tribes living near public lands and using public land resources.

12. The Environmental Justice analysis will employ guidance provided in H–1601–1, Appendix D, Social Science Considerations in Land Use Planning Decisions.

13. All BLM-managed lands in the planning area will be assessed for wilderness characteristics using criteria established by BLM Manual 6310. The RMP will examine options for managing lands with wilderness characteristics and determine the most appropriate land use allocations for these lands. Considering wilderness characteristics in the land use planning process may result in several outcomes, including, but not limited to: (1) Emphasizing other multiple uses as a priority over protecting wilderness characteristics; (2) emphasizing other multiple uses while applying management restrictions (conditions of use, mitigation measures) to reduce impacts to wilderness characteristics; (3) the protection of wilderness characteristics as a priority over other uses.

14. The RMP will incorporate by reference the BLM's 1998 *Rangeland Health Standards and Guidelines for California and Northwestern Nevada Final EIS,* Sacramento, CA.

15. Where appropriate and applicable, adaptive management principles will be incorporated as described in the Department of Interior Departmental Manual, Part 522, Chapter 1 (522 DM 1). Also as described in the Manual, ''*Adaptive Management: The U.S. Department of the Interior Technical Guide*'' (Williams, 2007) will be used as the technical basis for implementing adaptive management programs.

16. Consultation with Native American tribes will be initiated to identify and discuss management options for any sacred sites located on BLM lands within the decision area.

17. Visual resource management (VRM) classes were established as management objectives for some properties determined eligible as ACECs in the 1992/1993 RMPs. This plan will expand upon the existing designations to provide a comprehensive visual resource inventory for lands that were not included in the ACEC evaluation areas and designate VRM Classes to all BLM lands within the planning area.

18. Information will be collected to identify areas where paleontological resources are likely to occur. This will establish a baseline for future compliance with the 2009 Paleontological Resources Preservation Act.

19. Wildlife habitat management will be consistent with DOI guidance and the California Department of Fish and Wildlife objectives.

20. The RMP will allocate lands as open or closed to geothermal leasing and adopt stipulations, leasing procedures, and best management practices as described in the ''*Record of Decision and Resource Management Plan Amendments for Geothermal Leasing in the Western US*'' (Department of the Interior-Bureau of Land Management, December 2008).

The BLM is also requesting nominations of areas for ACEC designation. To be considered as a potential ACEC, an area must meet the criteria of relevance and importance as established and defined in 43 CFR 1610.7–2. Nominations must include descriptive materials, detailed maps and evidence supporting the relevance and importance of the resource or area. There are currently 17 ACECs within the planning area: Baker Cypress, Butte Creek, Deer Creek, Elder Creek, Forks of the Butte, Gilham Butte, Hawes Corner, Iaqua Butte, Jenny Creek, Lacks Creek, Manila Dunes, Red Mountain, Sacramento Island, Sacramento River Bend, Shasta and Klamath Rivers Canyon, South Fork Eel Watershed, and Swasey Drive.

You may submit comments on issues and planning criteria in writing to the BLM at any public scoping meeting, or you may submit them to the BLM using one of the methods listed in the **ADDRESSES** section above. To be most helpful, you should submit comments by the close of the 30-day scoping period or within 15 days after the last public meeting, whichever is later. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. The BLM will evaluate identified issues and will place them into one of three categories:

1. Issues to be resolved in the plan;

2. Issues to be resolved through policy or administrative action; or

3. Issues beyond the scope of this plan.

The BLM will provide an explanation in the Draft RMP/Draft EIS as to why an issue was placed in category two or three. The public is also encouraged to help identify any management questions and concerns that should be addressed in the plan. The BLM will work collaboratively with interested parties to

identify the management decisions that are best suited to local, regional, and national needs and concerns.

The BLM will utilize and coordinate the NEPA scoping process to help fulfill the public involvement process under the National Historic Preservation Act (54 U.S.C. 306108) as provided in 36 CFR 800.2(d)(3). The information about historic and cultural resources within the area potentially affected by the proposed action will assist the BLM in identifying and evaluating impacts to such resources.

The BLM will consult with Indian tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration. Federal, State, and local agencies, along with tribes and other stakeholders that may be interested in or affected by the proposed action that the BLM is evaluating, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate in the development of the environmental analysis as a cooperating agency.

The BLM will use an interdisciplinary approach to develop the plan in order to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in the planning process: Recreation, Fisheries, Wildlife, Vegetation, Soil, Water, Air Quality, Geology, Minerals, Forestry, Livestock Grazing, Wilderness, Cultural Resources, Tribal Relations, Ecology, Social Sciences, Economics, Wildland Fire, Fuels, and Realty.

Authority: 40 CFR 1501.7, 43 CFR 1610.2

Thomas Pogacnik,

Deputy State Director.

[FR Doc. 2016–26817 Filed 11–4–16; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID BSEE–2016–0008; OMB Number 1014–0001; 17XE17000DX EEEE500000 EX1SF0000.DAQ000]

Information Collection Activities: Oil and Gas Well-Workover Operations; Submitted for Office of Management and Budget (OMB) Review; Comment Request

ACTION: 30-day Notice.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Safety and Environmental Enforcement (BSEE) is notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under Subpart F, *Oil and Gas Well-Workover Operations.* This notice also provides the public a second opportunity to comment on the revised paperwork burden of these regulatory requirements.

DATES: You must submit comments by December 7, 2016.

ADDRESSES: Submit comments by either fax (202) 395–5806 or email (*OIRA_Submission@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1014–0001). Please provide a copy of your comments to BSEE by any of the means below.

- Electronically: Go to *http://www.regulations.gov* and search for BSEE–2016–0008. Follow the instructions to submit public comments and view all related materials. We will post all comments.
- Email *Kelly.Odom@bsee.gov,* fax (703) 787–1546, or mail or hand-carry comments to: Department of the Interior; Bureau of Safety and Environmental Enforcement; Regulations and Standards Branch; Attention: Kelly Odom; 45600 Woodland Road, Sterling, VA 20166. Please reference 1014–0001 in your comment and include your name and return address.

FOR FURTHER INFORMATION CONTACT: Kelly Odom, Regulations and Standards Branch, (703) 787–1775, to request additional information about this ICR. To see a copy of the entire ICR submitted to OMB, go to *http://www.reginfo.gov* (select Information Collection Review, Currently Under Review).

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart F, *Oil and Gas Well-Workover Operations.*

OMB Control Number: 1014–0001.

Abstract: The Outer Continental Shelf (OCS) Lands Act at 43 CFR 1334 authorizes the Secretary of the Interior to prescribe rules and regulations to administer leasing of mineral resources on the OCS. Such rules and regulations will apply to all operations conducted under a lease, right-of-way, or a right-of-use and easement. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

In addition to the general rulemaking authority of the OCSLA at 43 U.S.C. 1334, section 301(a) of the Federal Oil and Gas Royalty Management Act (FOGRMA), 30 U.S.C. 1751(a), grants authority to the Secretary to prescribe such rules and regulations as are reasonably necessary to carry out FOGRMA's provisions. While the majority of FOGRMA is directed to royalty collection and enforcement, some provisions apply to offshore operations. For example, section 108 of FOGRMA, 30 U.S.C. 1718, grants the Secretary broad authority to inspect lease sites for the purpose of determining whether there is compliance with the mineral leasing laws. Section 109(c)(2) and (d)(1), 30 U.S.C. 1719(c)(2) and (d)(1), impose substantial civil penalties for failure to permit lawful inspections and for knowing or willful preparation or submission of false, inaccurate, or misleading reports, records, or other information. Because the Secretary has delegated some of the authority under FOGRMA to BSEE, 30 U.S.C. 1751 is included as additional authority for these requirements.

These authorities and responsibilities are among those delegated to BSEE. The regulations at 30 CFR 250, Subpart F, concern oil and gas well-workover operations and are the subject of this collection. This request also covers the related Notices to Lessees and Operators (NTLs) that BSEE issues to clarify, supplement, or provide additional guidance on some aspects of our regulations.

BSEE uses the information collected under Subpart F in our efforts to analyze and evaluate planned well-workover operations to ensure that these operations result in personnel safety and protection of the environment. They use this evaluation in making decisions to approve, disapprove, or to require modification to the proposed well-workover operations. Specifically, BSEE uses the information collected to:

- Review log entries of crew meetings to verify that safety procedures have been properly reviewed.
- review well-workover procedures relating to hydrogen sulfide (H_2S) to ensure the safety of the crew in the event of encountering H_2S.

• review well-workover diagrams and procedures to ensure the safety of well-workover operations.

• verify that the crown block safety device is operating and can be expected to function and avoid accidents.

• assure that the well-workover operations are conducted on well casing that is structurally competent.

Frequency: On occasion.

Description of Respondents: Potential respondents comprise Federal OCS oil, gas, and sulfur lessees and/or operators, and holders of pipeline rights-of-way.

Estimated Reporting and Recordkeeping Hour Burden: The estimated annual hour burden for this information collection is a total of 5,284 hours. Responses are mostly mandatory and one requirement is to retain/maintain a benefit. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 250, subpart F	Reporting requirement	Hour burden	Average number of annual reponses	Annual burden hours rounded)
Requests				
600–620	General departure and alternative compliance requests not specifically covered elsewhere in Subpart F regulations.	Burden covered under 1014–0022		041
611	Document results weekly of traveling-block safety device in the operations log.	2	365 workovers x 3 results = 1,095.	2190
612	Request establishment/amendment/cancellation of field well-workover rules.	6.5	20 requests	130
613; 616(a)(4); 619(f)	These sections contain references to information, approvals, requests, payments, etc., which are submitted with an APM, the burdens for which are covered under its own information collection.	Burden covered under 1014–0026		0
613(d)	Submit to District Manager on Form BSEE–0125, End of Operations Report, an operation resulting in the initial recompletion of a well into a new zone, include a new schematic of the tubing subsurface equipment if subsurface equipment has been changed.	Burden covered under 1014–0018		0
614(b)	Post number of stands of drill pipe or workover string and drill collars that may be pulled prior to filing the hole and equivalent well-control fluid volume.	1.13	291 postings	329
619(b)	Notify BSEE if sustained casing pressure is observed on a well.	5	527 notifications	2,635
Total Burden			1,933 Responses	5,284

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: There are no non-hour cost burdens associated with this collection.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.,)* provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.,*) requires each agency ''. . . to provide notice . . . and otherwise consult with members of the public and affected agencies concerning each proposed collection of information . . .'' Agencies must specifically solicit comments to: (a) Evaluate whether the collection is necessary or useful; (b) evaluate the accuracy of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of technology.

To comply with the public consultation process, on July 8, 2016, we published a **Federal Register** notice (81 FR 44657) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.199 provides the OMB Control Number for the information collection requirements imposed by the 30 CFR 250, Subpart F regulations. The regulation also informs the public that they may comment at any time on the collection of information and provides the address to which they should send comments. We did not receive any comments in response to the **Federal Register** notice.

Public Availability of Comments: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

BSSE Information Collection Clearance Officer: Nicole Mason (703) 787–1607.

Keith Good,

Senior Advisor, Office of Offshore Regulatory Programs.

[FR Doc. 2016–26814 Filed 11–4–16; 8:45 am]

BILLING CODE 4310–VH–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1313 (Final)]

1,1,1,2-Tetrafluoroethane (R–134a) from China; Scheduling of the Final Phase of an Antidumping Duty Investigation

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–1313 (Final) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of 1,1,1,2-tetrafluoroethane (R–134a) from China, provided for in subheading 2903.39.20 of the Harmonized Tariff Schedule of the United States, preliminarily determined by the Department of Commerce to be sold at less-than-fair-value.[1]

DATES: *Effective Date:* October 7, 2016.

FOR FURTHER INFORMATION CONTACT: Joanna Lo (202–205–1888), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—The final phase of this investigation is being scheduled, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), as a result of an affirmative preliminary determination by the Department of Commerce that imports of 1,1,1,2-tetrafluoroethane (R–134a) from China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on March 3, 2016, by the American HFC Coalition and its individual members (Amtrol, Inc., West Warwick, Rhode Island; Arkema, Inc., King of Prussia, Pennsylvania; The Chemours Company FC LLC, Wilmington, Delaware; Honeywell International Inc., Morristown, New Jersey; Hudson Technologies, Pearl River, New York; Mexichem Fluor Inc., St. Gabriel, Louisiana; and Worthington Industries, Inc., Columbus, Ohio) and District Lodge 154 of the International Association of Machinists and Aerospace Workers.

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Participation in the investigation and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on February 8, 2017, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on Thursday, February 23, 2017, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before February 16, 2017. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should participate in a prehearing conference to be held on February 21, 2017, at the U.S. International Trade Commission Building, if deemed necessary. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is February 15, 2017. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is March 2, 2017. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation, including statements of support or opposition to the petition, on or before March 2, 2017. On March 17, 2017, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before March 21, 2017, but such final comments must not contain new factual information and must otherwise comply

[1] For purposes of this investigation, the Department of Commerce has defined the subject merchandise as 1,1,1,2-Tetrafluoroethane, R–134a, or its chemical equivalent, regardless of form, type, or purity level. The chemical formula for 1,1,1,2-Tetrafluoroethane is CF_3CH_2F, and the Chemical Abstracts Service registry number is CAS 811–97–2.

with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on E-Filing,* available on the Commission's Web site at *https://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: November 1, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–26780 Filed 11–4–16; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Westinghouse Air Brake Technologies Corp., Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Westinghouse Air Brake Technologies Corp. et al.,* Civil Action No. 1:16-cv-02147. On October 26, 2016, the United States filed a Complaint alleging that Westinghouse Air Brake Technologies Corp.'s (''Wabtec'') proposed acquisition of Faiveley Transport S.A. and Faiveley Transport North America would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires Wabtec to divest Faiveley's U.S. freight brakes business.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's Web site at *http://www.justice.gov/atr* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's Web site, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments should be directed to Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, Department of Justice, 450 Fifth Street NW., Suite 8700, Washington, DC 20530 (telephone: 202–307–0924).

Patricia A. Brink,

Director of Civil Enforcement.

United States District Court for the District of Columbia

United States of America, U.S. Department of Justice, Antitrust Division, 450 Fifth Street NW., Suite 8700, Washington, DC 20530 Plaintiff, v. *Westinghouse Air Brake Technologies Corp., 1001 Airbrake Avenue, Wilmerding, PA 15148, Faiveley Transport S.A., Le Delage Building, Hall Parc—Bâtiment 6A, 6ème étage, 3, rue du 19 mars 1962, 92230 Gennevilliers, CEDEX—France* and *Faiveley Transport North America, 50 Beachtree Boulevard, Greenville, SC 29605, Defendants.*

Case No.: 1:16-cv-02147
Judge: Tanya S. Chutkan
Filed: 10/26/2016

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action to enjoin the proposed acquisition of Faiveley Transport S.A. and Faiveley Transport North America (collectively, ''Faiveley'') by Westinghouse Air Brake Technologies Corporation (''Wabtec'') and to obtain other equitable relief. The United Sates alleges as follows:

I. Introduction

1. Wabtec proposes to acquire Faiveley, a global provider of railway brake equipment components that make up a critical system intimately linked to both the performance and safety of trains. Faiveley produces its brake system components in the United States through its subsidiary, Faiveley Transport North America. Wabtec is a leading manufacturer of rail equipment used in the assembly of freight cars built for use in the U.S. freight rail network. For purchasers of components of freight car brake systems, Wabtec and Faiveley are two of the top three suppliers approved by the Association of American Railroads (''AAR''), with combined market shares ranging from approximately 41 to 96 percent for many of the products in which they compete. Where a product must be AAR approved, customers must source it from an AAR-approved supplier of that product.

2. In 2010, Faiveley entered into a joint venture with Amsted Rail Company, Inc. (''Amsted''), a rail equipment supplier based in Chicago, Illinois, to form Amsted Rail Faiveley LLC (''ARF''). Faiveley owns 67.5 percent of ARF and Amsted owns the remaining 32.5 percent interest in the joint venture. As part of the joint venture, all of the freight car brake system components that are manufactured by Faiveley Transport North America are marketed and sold to customers by Amsted. Amsted and Faiveley do not compete for the sale of brake system components. Critically, the joint venture allows Faiveley to bundle brake components with Amsted's other products such as wheels and axles, thereby increasing its ability to compete for the sale of freight car brake system components.

3. Wabtec's proposed acquisition of Faiveley would eliminate head-to-head competition in the development, manufacture, and sale of several components of freight car brake systems in the United States. The proposed acquisition likely would give Wabtec the incentive and ability to raise prices or decrease the quality of service provided to customers in the railroad freight industry. The proposed acquisition also would eliminate future competition for control valves, the most safety-critical component on a freight car. If approved, the proposed acquisition would eliminate the entry of Faiveley into this market, thus maintaining a century-old duopoly between Wabtec and its only other control valve rival, and reducing the two incumbent control valve suppliers' incentive to compete.

4. Accordingly, the proposed acquisition likely would substantially lessen existing and future competition

in the development, manufacture, and sale of freight car brake system components in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and should be enjoined.

II. Jurisdiction and Venue

5. The United States brings this action pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, to prevent and restrain the defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18.

6. Defendants manufacture and sell components of freight car brake systems throughout the United States. They are engaged in a regular, continuous, and substantial flow of interstate commerce, and their activities in the development, manufacture, and sale of rail equipment have had a substantial effect upon interstate commerce. The Court has subject-matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. 25, and 28 U.S.C. 1331, 1337(a), and 1345.

7. Venue is proper in this District under Section 12 of the Clayton Act, 15 U.S.C. 22 and 28 U.S.C. 1391(c). Defendants have consented to venue and personal jurisdiction in the District of Columbia.

III. Defendants and the Proposed Acquisition

8. Wabtec is a Delaware corporation headquartered in Wilmerding, Pennsylvania. It is one of the world's largest providers of rail equipment and services with global sales of $3.3 billion in 2015. Wabtec makes and sells rail equipment, including braking equipment, for a variety of different end uses, including the railroad freight industry. In 2015, Wabtec's annual worldwide sales of freight rail equipment were approximately $2 billion.

9. Faiveley Transport North America is a New York corporation headquartered in Greenville, South Carolina. Faiveley makes and sells rail equipment, including braking equipment, for a variety of end uses to customers in 24 countries, including the United States. In particular, it manufactures products used in freight rail applications. During the fiscal year beginning April 1, 2015 and ending March 31, 2016, Faiveley had global sales of approximately €1.1 billion, with approximately $174 million of revenue in the United States. Faiveley has manufacturing facilities in Europe, Asia, and North America, including six U.S. locations. Faiveley Transport North America is a wholly-owned subsidiary of defendant Faiveley Transport S.A., a société anonyme based in Gennevilliers, France.

10. On July 27, 2015, Wabtec entered into an Exclusivity Agreement with Faiveley whereby it made an irrevocable offer to acquire Faiveley, for cash and stock totaling approximately $1.8 billion, including assumed debt. The proposed acquisition would create the world's largest rail equipment supplier with expected revenue of approximately $4.5 billion per year and a presence in every key rail market in the world.

IV. Trade and Commerce

A. Industry Overview

11. Rail freight transport is the use of railroads and freight trains to transport cargo. A freight train is a group of freight cars hauled by one or more locomotives on a railway. A typical freight locomotive can haul as many as 25 to 100 freight cars.

12. The railroad freight industry plays a significant role in the U.S. economy, hauling key commodities such as energy products, automobiles, construction materials, chemicals, coal, petroleum, equipment, food, metals, and minerals. The U.S. freight rail network accounts for approximately 40 percent of the distance all freight shipments of commodity goods travel in the United States. The U.S. freight rail network is one of the most developed rail networks in the world and it supports approximately $60 billion in railroad freight shipments each year. This freight network consists of 140,000 miles of trackage owned and operated by seven Class I Railroads (as identified by the U.S. Department of Transportation), 21 regional railroads, and 510 local railroads.

13. Railroads and freight car leasing companies purchase new freight cars from car builders. Car builders build the body of the freight car and are responsible for sourcing and integrating all of the components needed for the various sub-systems required to assemble a functioning freight car. The most important sub-system is the safety critical brake system. Manufacturers of brake systems and brake system components sell their components and systems to car builders for new freight cars and directly to railroads and leasing companies for aftermarket maintenance of cars. Railroads and freight car leasing companies collectively purchase and maintain approximately 1.5 million freight cars utilized throughout the U.S. freight rail network. Freight railroads in the United States spend over $20 billion annually to acquire new freight cars and maintain existing freight car fleets. Freight car maintenance is critical for the safety and performance of a freight train.

B. Railroad Freight Industry Regulation

14. Freight cars often must travel over multiple railroads' trackage in order to deliver commodities throughout the United States. Traveling over multiple lines requires freight car equipment to be mechanically interoperable and meet performance standards for certain types of rail equipment. In order for the brake systems on individual freight cars to work together properly, freight car brake systems must be comprised of industry-approved components and meet critical performance standards.

15. The Federal Railroad Administration of the U.S. Department of Transportation establishes strict standards to ensure interoperability of freight cars in use within the U.S. freight rail network. These standards require that certain freight car components achieve common performance and interoperability standards. For certain freight rail equipment, including freight car brake systems, the AAR is responsible for setting technical and performance standards. The AAR is a policy- and standard-setting organization comprised of full, affiliate, and associate members. Full members include the Class I railroads. Affiliate and associate members include rail equipment suppliers and freight car owners.

16. AAR's functions include technical and mechanical standard setting for freight rail equipment. The AAR manages fifteen technical committees comprised of select employees of full, affiliate, and associate members. These committees write technical and performance standards for components used on freight trains. They also approve products for use within the U.S. freight rail network. Thus, a component manufacturer like Wabtec or Faiveley must have AAR approval for many significant components of a freight train before its products can be used in the United States. The length and difficulty of the AAR-approval process depends on the nature and function of the train component. Brake components face some of the lengthiest and most rigorous testing and approval processes because brakes are safety-critical components that must be fail-safe. The Brake Systems Committee of the AAR oversees the review and performance testing of brake equipment and it awards incremental approvals over time before a component can earn unconditional approval.

17. Freight car owners and operators view AAR approval as a critical certification. Industry participants view

AAR approval as a high barrier to selling freight car brake systems and components in the United States.

C. Freight Car Brake Equipment Purchases

18. On average, there are expected to be approximately 75,000 new freight car builds per year in the United States. Demand for new cars is tied to macroeconomic conditions, including demand for the commodities that freight cars carry. In recent years demand for freight cars has ranged from approximately 63,000 to 81,000 new car builds per year. Railroads and freight car leasing companies typically issue requests for proposals to freight car builders who compete to provide complete freight cars built to specification. Freight car builders source sub-systems and components from suppliers, like Wabtec and Faiveley. Where a product must be AAR approved, car builders must source it from an AAR-approved supplier of that product. For certain components of a freight car brake system, Wabtec and Faiveley are two of the only three AAR-approved suppliers.

19. New freight car procurements typically include performance specifications identified by customers. Freight car builders use these specifications to source and price particular components for the procurement. Inclusion in new car procurements also becomes a source for long-term revenues for component suppliers. Incumbent suppliers for many freight car brake system components enjoy an advantage in the aftermarket. Although components are technically interoperable, changing suppliers often introduces at least some switching costs and increased risk of failure for end-use customers. Thus, competitiveness for original equipment sales is critical.

20. Customers can purchase freight car brake equipment on a component-by-component basis. However, a large rail equipment supplier will typically offer better pricing to customers who purchase multiple freight car brake system components together as a bundle. For example, rail equipment suppliers will offer more competitive pricing to customers who purchase all the components for an entire freight car brake system rather than piecemeal purchases of certain components. Because product bundles may span multiple systems on a freight train, suppliers with broad offerings often have a competitive advantage over niche suppliers.

V. Relevant Markets

21. Defendants compete across a range of freight car brake system components, many of which require AAR approval. Each product described below constitutes a line of commerce under Section 7 of the Clayton Act, 15 U.S.C. 18, and each is a relevant product market in which competitive effects can be assessed. They are recognized in the railroad freight industry as separate product lines, they have unique characteristics and uses, they have customers that rely specifically on these products, they are distinctly priced, and they have specialized vendors.

22. Mergers and acquisitions that reduce the number of competitors in already concentrated markets are more likely to substantially lessen competition. Concentration can be measured in various ways, including by market shares and by the widely-used Herfindahl-Hirschman Index (''HHI''). *See* Appendix. Under the *Horizontal Merger Guidelines,* post-acquisition HHIs above 2500 and changes in HHI above 200 trigger a presumption that a proposed acquisition is likely to enhance market power and substantially lessen competition in a defined market. Given the high pre- and post-acquisition concentration levels in the relevant markets described below, Wabtec's proposed acquisition of Faiveley presumptively violates Section 7 of the Clayton Act. In almost all of these markets, customers would face a duopoly after the acquisition.

A. Relevant Market 1: Hand Brakes

23. A hand brake is a manual wheel located at the end of a freight car that, when turned, can engage a freight car's brake system without using pneumatic or hydraulic pressure. It is a secondary means to prevent a freight car from moving, for example, during maintenance or when being connected to a new locomotive.

24. The market for the development, manufacture, and sale of freight car hand brakes is already concentrated. Wabtec and Faiveley together hold approximately 60 percent of this market based on the quantity of hand brakes sold. Their only significant competitor holds most of the remaining share of the hand brakes market. A fourth, marginal competitor sells a negligible quantity of hand brakes each year. Further, this competitor does not manufacture any other significant components of a freight car brake system nor is it likely to begin doing so in the foreseeable future. Thus, it is unlikely to replace the competition that would be lost as a result of the proposed acquisition.

25. In the U.S. market for the development, manufacture, and sale of freight car hand brakes, the pre-acquisition HHI is 3,500. The post-acquisition HHI would be in excess of 5,000, with an increase in HHI in excess of 1,500. Thus, this market is highly concentrated and would become significantly more concentrated as a result of the proposed acquisition.

B. Relevant Market 2: Slack Adjusters

26. A slack adjuster is a pneumatically-driven ''arm'' that applies pressure to the brake shoe (a friction material) in order to change the brake shoe's position relative to the train's wheel. As the brake shoe wears down, this adjustment in position maintains the brake systems' ability to apply the correct amount of braking force by ensuring the brake shoe is applied appropriately to the wheel to achieve optimal braking capability.

27. Combined, Wabtec and Faiveley have approximately 76 percent of this market based on quantity sold. Their only significant competitor has a market share of approximately 24 percent, thereby making the proposed acquisition a virtual merger-to-duopoly in the market for the development, manufacture, and sale of slack adjusters. The proposed acquisition threatens to further concentrate this market, as evidenced by the pre- and post-merger HHIs. The post-acquisition HHI would be approximately 6,300, reflecting an increase of approximately 2,800 as a result of the acquisition.

C. Relevant Market 3: Truck-Mounted Brake Assemblies

28. Freight car braking equipment is often mounted under the bogie (*e.g.,* car), thereby serving as the foundation for the wheels. Truck-mounted brake assemblies (''TMBs''), however, are an approach to mounting the brakes on freight car designs for which body-mounted brakes are not suitable. TMBs are free standing equipment that do not require additional rigging and so are significantly lighter than their bogie counterparts. They are commonly used for special lightweight or low profile freight car designs.

29. Post-acquisition, the market for the development, manufacture, and sale of TMBs would be highly concentrated. Combined, Wabtec and Faiveley have approximately a 96 percent share of the market based on quantity sold. The post-acquisition HHI of the merged firm would be approximately 9,200, with an increase of approximately 3,600 resulting from the acquisition.

D. Relevant Market 4: Empty Load Devices

30. Empty load devices are incorporated into every freight car and detect when a freight car is empty. The empty load device relays this information to the brake system control board, which is then able to reduce the amount of braking force applied to the brakes on a freight car that is empty so that it decelerates in concert with the remainder of the freight cars in tow.

31. Post acquisition, the market for the development, manufacture, and sale of empty load devices would be highly concentrated. Combined, Wabtec and Faiveley have a 60 percent share of the market based on quantity sold. The post-acquisition HHI of the merged firm would be approximately 5,100, with an increase of approximately 1,700 resulting from the acquisition.

E. Relevant Market 5: Brake Cylinders

32. A brake cylinder is a component of a freight car brake system that converts compressed air into mechanical force to apply the brake shoe to the wheel in order to decelerate or stop the train.

33. Post-acquisition, the market for the development, manufacture, and sale of brake cylinders would be highly concentrated. Combined, Wabtec and Faiveley have approximately a 41 percent share of the market based on quantity sold. The post-acquisition HHI of the merged firm would be approximately 5,100 with an increase of approximately 800 resulting from the acquisition.

F. Relevant Market 6: Control Valve and Co-Valves

34. Modern trains rely upon a fail-safe air (or pneumatic) brake system that uses changes in air pressure to signal each freight car to release its brakes. A reduction or loss of air pressure applies the brakes using the compressed air in the air reservoir. An increase in air pressure decreases the braking force applied until it is released. The control valve, often described as the brain of a freight car's brake system, regulates the flow of air to engage or disengage the brakes.

35. A control valve is the most highly-engineered, technologically-sophisticated component in a freight car brake system. Without it, a supplier cannot offer a complete freight car brake system. The development of a control valve also requires significant development time and financial resources. In addition, it faces one of the railroad freight industry's lengthiest and most rigorous testing and approval processes.

36. The market for the development, manufacture, and sale of control valves is characterized by a century-old duopoly between Wabtec and another manufacturer. Over the past five years, Wabtec had approximately 40 percent of the U.S. control valve market and its rival had the other 60 percent of the market.

37. On June 29, 2016, Faiveley obtained conditional approval from the AAR to sell a control valve. In doing so, it disrupted the duopoly by becoming the first firm in over 25 years and only the second firm in the last 50 years to develop a control valve and make substantial progress through the industry's formidable testing and approval process for freight car control valves. Thus, the proposed acquisition would eliminate a third potential supplier of control valves, and continue a longstanding duopoly for the foreseeable future.

38. Working closely with the control valve are its complementary valves: The dirt collector, angle cock, and vent valve (collectively, ''co-valves''). A dirt collector is a ball style cut-out-cock with a dirt chamber that is installed adjacent to the control valve. It allows for impurities in the air compressor to be filtered out to keep the air lines feeding the braking system clear of obstructions that would reduce air pressure. An angle cock is placed at the end of the brake pipe and provides a means for closing the brake pipe at the end of the freight car. A vent valve is a device on a freight car that reacts to a rapid drop in brake pipe pressure and is used to exhaust air from the brake pipe during emergency brake applications. For new freight car builds, sales of co-valves correlate with the sale of the control valve. Customers have a preference for purchasing co-valves and control valves from the same supplier, to which they return for replacement parts in the aftermarket. While Faiveley currently has insignificant sales of angle cocks, vent valves, and dirt collectors, it is an AAR-approved supplier of these products.

G. Geographic Market

39. Based on customer location and the governing regulatory framework, the United States is the relevant geographic market for the development, manufacture, and sale of freight brake components. Wabtec and Faiveley compete with each other for customers located throughout the United States. When a geographic market is defined based on the location of customers, competitors in the market are firms that sell to customers in the specified region even though some suppliers that sell into the relevant market may be located outside the geographic market. In addition, before suppliers can sell components of freight car brake systems in the United States, they must first get AAR approval. The AAR's regulatory authority requires products be certified for interoperability within the U.S. freight rail network. Because these products are certified for use and sale anywhere in the United States, the regulatory framework determines which firms can supply the U.S. customer base, which supports a United States geographic market. Furthermore, suppliers of freight car brake systems and components typically deliver their products and services to customers' locations and are able to price discriminate based on those locations.

40. In addition, a small but significant increase in price of each of the foregoing components of a freight car brake system sold into the United States would not cause a sufficient number of U.S. customers to turn to providers of freight brake components sold into other countries because those products lack AAR approval and interoperability with U.S. freight rail networks. Accordingly, the United States is a relevant geographic market within the meaning of Section 7 of the Clayton Act.

VI. Anticompetitive Effects

41. Wabtec and Faiveley presently compete in the development, manufacture, and sale of many components of a freight car brake system, including hand brakes, slack adjusters, empty load devices, TMBs and brake cylinders. The defendants' combined shares in each of these markets range from approximately 41 to 96 percent. Therefore, the unilateral competitive effects of the proposed acquisition are presumptively harmful in these product markets under the *Horizontal Merger Guidelines.* The proposed acquisition likely will result in unilateral effects that substantially lessen competition in the markets for hand brakes, load detection devices, slack adjusters, TMBs, and brake cylinders, respectively.

42. In each of the foregoing relevant markets, Wabtec and Faiveley presently compete against each other and only one other large competitor. Prices and other terms of trade are usually determined by negotiations between suppliers and customers. Products are not highly differentiated by function or performance, and price is the primary customer consideration given that performance is presumed after approval by the industry's standard-setting body, the AAR.

43. A merger between two competing sellers reduces the ability of buyers to negotiate better contract terms, including price, by leveraging competing offers. The loss of customer negotiating power can significantly enhance the ability and incentive of the merged entity to offer less competitive terms. Customers likely derive significant benefits from having Faiveley in the market today, as reflected by its substantial market shares in the relevant freight brake components identified above. The resulting loss of a competitor and increased concentration of market share indicate that the acquisition likely will result in significant harm from expected price increases and decreases in quality of service.

44. When the proposed acquisition was announced, Wabtec and a second manufacturer were the only AAR-approved suppliers of control valves, a duopolistic market they had shared for over a century.

45. As the second-largest railway brake manufacturer in the world, Faiveley was uniquely positioned to enter the control valve market. Faiveley had developed a control valve prototype that it intended to shepherd through the AAR's control valve testing and approval process. If successful, it would have become a third control valve supplier. But for the merger, Faiveley likely would have entered the control valve market, thereby invigorating competition between Wabtec and its only competitor in the control valve market. The entry of a third supplier of control valves likely would increase competition and allow customers to negotiate better prices and terms.

46. Faiveley's entry into the control valve market would pose an immediate threat to the incumbent suppliers, forcing them to compete aggressively or risk losing a sale to Faiveley. Faiveley's customers anticipate it would offer price competition in order to gain quick acceptance of its control valve. As a result, Faiveley likely would have had a substantial impact on pricing, service and other commercial terms offered by the incumbent suppliers, even with a small initial share of actual sales. Therefore, the proposed acquisition is likely to result in anticompetitive unilateral effects in the market for control valves.

VII. Entry

47. Given the substantial time required to develop and qualify a component of a freight car brake system, timely and sufficient entry by other competitors into any of the relevant markets is unlikely to mitigate the harmful effects of the proposed acquisition.

48. The likelihood of another potential entrant in the control valve market is even more remote given the historical dearth of meaningful attempts to enter this market, as well as the substantial time and cost associated with entry into the control valve market.

VIII. Violation Alleged

49. The acquisition of Faiveley by Wabtec likely would substantially lessen competition in each of the relevant markets in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

50. Unless enjoined, the acquisition likely would have the following anticompetitive effects, among others:

(a) Actual and potential competition between Wabtec and Faiveley in the relevant markets would be eliminated;

(b) competition generally in the relevant markets would be eliminated; and

(c) prices and commercial terms for the relevant products would be less favorable, and quality and service relating to these products likely would decline.

IX. Request for Relief

51. The United States requests that this Court:

(a) Adjudge and decree Wabtec's proposed acquisition of Faiveley to be unlawful and in violation of Section 7 of the Clayton Act, 15 U.S.C. 18;

(b) preliminarily and permanently enjoin and restrain defendants and all persons acting on their behalf from consummating Wabtec's proposed acquisition or from entering into or carrying out any contract, agreement, plan, or understanding, the effect of which would be to combine Faiveley with the operations of Wabtec;

(c) award the United States its costs of this action; and

(d) award the United States such other relief as the Court deems just and proper.

Dated: October 26, 2016

Respectfully submitted,

FOR PLAINTIFF UNITED STATES:

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Appendix

Herfindahl-Hirschman Index

The Herfindahl-Hirschman Index (''HHI'') is a commonly accepted measure of market concentration. The HHI is calculated by squaring the market share of each firm competing in the relevant market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2{,}600$). The HHI takes into account the relative size distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size, and reaches its maximum of 10,000 points when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

United States District Court for the District of Columbia

United States Of America, Plaintiff, v. *Westinghouse Air Brake Technologies Corp., Faiveley Transport* S.A., and *Faiveley Transport North America, Defendants.*
Case No.: 1:16–cv–02147
Judge: Tanya S. Chutkan
Filed: 10/26/2016

Competitive Impact Statement

Plaintiff United States of America (''United States''), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On July 27, 2015, Defendant Westinghouse Air Brake Technologies Corp. (''Wabtec'') and Defendants Faiveley Transport S.A. and Faiveley Transport North America (''Faiveley'') entered into an Exclusivity Agreement pursuant to which Wabtec made an irrevocable offer to acquire Faiveley for cash and stock totaling approximately $1.8 billion, including assumed debt. The United States filed a civil antitrust

Complaint on October 26, 2016, seeking to enjoin the proposed acquisition. The Complaint alleges that the acquisition likely would lessen competition substantially for the development, manufacture, and sale of various railroad freight car brake components including hand brakes, slack adjusters, truck-mounted brake assemblies, empty load devices, brake cylinders, and brake control valves in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. This loss of competition likely would result in significant harm from expected price increases and decreases in quality of service by the incumbent suppliers in the markets for those products.

At the same time the Complaint was filed, the United States filed a Hold Separate Stipulation and Order and a proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, Defendants are required to divest Faiveley's entire U.S. freight car brakes business, including all assets relating to Faiveley's freight car brake control valve development project (known as the FTEN) to a named buyer, Amsted Rail Company, Inc. (''Amsted''). These assets collectively are referred to as the ''Divestiture Assets.'' Under the terms of the Hold Separate Stipulation and Order, Defendants will take certain steps to ensure that the Divesture Assets are operated as a competitively independent, economically viable and ongoing business concern, that the Divestiture Assets will remain independent and uninfluenced by the consummation of the acquisition; and that competition is maintained during the pendency of the ordered divestiture.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

Wabtec is a Delaware corporation headquartered in Wilmerding, Pennsylvania. It is one of the world's largest providers of rail equipment and services with global sales of $3.3 billion in 2015. In the United States, Wabtec makes and sells rail equipment, including braking equipment, for a variety of different end-uses, including the railroad freight industry. Wabtec's annual global sales of freight rail equipment totaled approximately $2 billion in 2015.

Faiveley Transport S.A. is a société anonyme based in Gennevilliers, France. Faiveley makes and sells rail equipment, including braking equipment, for a variety of end uses to customers in 24 countries, including the United States. In particular, it manufactures products used in freight rail applications. During the fiscal year beginning April 1, 2015 and ending March 31, 2016, Faiveley had global sales of approximately €1.1 billion, with approximately $174 million of revenue in the United States. Faiveley has manufacturing facilities in Europe, Asia, and North America, including six U.S. locations.

Faiveley Transport North America is a wholly-owned subsidiary of Faiveley Transport S.A. It is a New York Corporation headquartered in Greenville, South Carolina. It is the sole business unit of Faiveley that is responsible for the development, manufacture, and sale of freight car brake components in the United States.

In 2010, Faiveley entered into a joint venture with Amsted, a rail equipment supplier based in Chicago, Illinois, to form Amsted Rail Faiveley, LLC (''ARF''). Faiveley owns 67.5 percent of ARF and Amsted owns the remaining 32.5 percent. As part of the joint venture, all of the freight car brake components that are manufactured by Faiveley currently are marketed and sold to customers by Amsted. Critically, the joint venture allows Faiveley to bundle brake components with Amsted's other products such as wheels and axles, thereby increasing its ability to compete for the sale of freight car brake components against Wabtec.

On July 27, 2015, Wabtec and Faiveley entered into an Exclusivity Agreement whereby Wabtec would acquire Faiveley for cash and stock totaling approximately $1.8 billion, including assumed debt. The proposed acquisition would create the world's largest rail equipment supplier with expected revenue of approximately $4.5 billion per year and a presence in every key rail market in the world. As part of that acquisition, Wabtec proposed to acquire all of Faiveley's freight car brakes business in the United States, including its interest in the ARF joint venture and Faiveley's FTEN freight car brake control valve now being developed. This acquisition is the subject of the Complaint and proposed Final Judgment filed by the United States on October 26, 2016.

B. Background on Freight Car Brake Equipment Purchases

Rail freight transport is the use of railroads and freight trains to transport cargo. The railroad freight industry plays a significant role in the U.S. economy, hauling key commodities such as energy products, automobiles, construction materials, chemicals, coal, petroleum, equipment, food, metals, and minerals. The U.S. freight rail network accounts for approximately 40 percent of the distance all freight shipments of commodity goods travel in the United States. The U.S. freight rail network is one of the most developed rail networks in the world and it supports approximately $60 billion in railroad freight shipments each year. This freight network consists of 140,000 miles of trackage owned and operated by seven Class I Railroads, 21 regional railroads, and 510 local railroads.

In order to deliver commodities throughout the United States, freight cars often must travel over multiple railroads' trackage. Traveling over multiple lines requires freight car equipment to be mechanically interoperable and meet common performance standards for certain types of rail equipment. In order for the brake systems on individual freight cars to work together properly, freight car brake systems must be comprised of industry-approved components and meet critical performance standards. For certain freight rail equipment, including freight car brake systems, the Association of American Railroads (''AAR'') is responsible for setting technical and performance standards. The AAR is a policy- and standard-setting organization comprised of full, affiliate, and associate members. Full members include the Class I railroads. Affiliate and associate members include rail equipment suppliers and freight car owners.

AAR's functions include technical and mechanical standard setting for freight rail equipment. The AAR manages fifteen technical committees that write technical and performance standards for all components used on freight trains and approve products for use. Thus, a component manufacturer must have AAR approval for brake components before they can be used. Brake components face some of the lengthiest and most rigorous testing and approval processes because brakes are safety-critical components that must be fail-safe. The Brake Systems Committee of the AAR oversees the review and performance tests of braking equipment

and it awards incremental approvals over time before a component can earn unconditional approval. Freight car owners and operators view AAR approval as a critical certification. Industry participants view AAR approval as a high barrier to selling freight car brake systems and components in the United States.

Railroads and freight car leasing companies collectively spend over $20 billion annually to obtain new freight cars and to maintain approximately 1.5 million freight cars utilized throughout the United States. On average, there are expected to be approximately 75,000 new freight car builds per year in the United States, and demand for new cars is tied to macroeconomic conditions, including demand for the commodities these freight cars carry. In recent years, demand for freight cars has ranged from approximately 63,000 to 81,000 new car builds. Railroads and freight car leasing companies typically issue requests for proposals to freight car builders who compete to provide complete freight cars built to specification. Freight car builders source sub-systems and components from suppliers like, Wabtec and Faiveley. Where a product must be AAR approved, car builders must source it from an AAR-approved supplier of that product. For certain components of a freight car brake system, Wabtec and Faiveley are two of the only three AAR-approved suppliers of the product.

New freight car procurements typically include performance specifications identified by customers. Freight car builders use these specifications to source and price particular components for the procurement. Inclusion in new car procurements also becomes a source for long-term revenues for component suppliers. Incumbent suppliers for many freight car brake system components enjoy an advantage in the aftermarket. Although components are technically interoperable, changing suppliers often introduces switching costs and increased risk of failure for end-use customers. Thus, competitiveness for original equipment sales is critical.

C. Relevant Markets Affected by the Proposed Acquisition

Defendants compete across a range of freight car brake system components that require AAR approval. The Complaint alleges that each of these brake system components is a relevant product market in which competitive effects can be assessed. The different components are recognized in the railroad freight industry as separate product lines, they have unique characteristics and uses, they have customers that rely specifically on these products, they are distinctly priced, and they have specialized vendors. Competition would likely be lessened with respect to those components as a result of the proposed acquisition because there would be one fewer substantial equipment manufacturer in each of these highly concentrated markets. For purchasers of components of freight car brake components, Wabtec and Faiveley are two of the top three suppliers, with combined market shares of approximately 41 to 96 percent for the products in which they compete. Faiveley is expected to be an even stronger competitor after full commercialization of the FTEN.

1. U.S. Markets for Hand Brakes, Slack Adjusters, Truck-Mounted Brake Assemblies, Empty Load Devices, and Brake Cylinders

The Complaint alleges likely harm in five distinct product markets for freight car brake components that Faiveley currently sells under and through the ARF joint venture: Hand brakes, slack adjusters, truck-mounted brake assemblies (''TMBs''), empty load devices, and brake cylinders. A hand brake is a manual wheel located at the end of a freight car that, when turned, can engage a freight car's brakes system without using pneumatic or hydraulic pressure. It is a secondary means to prevent a freight car from moving, for example, during maintenance or when being connected to a new locomotive. A slack adjuster is a pneumatically-driven ''arm'' that applies pressure to the brake shoe (a friction material) in order to change the brake shoe's position relative to the train's wheel. As the brake shoe wears down, this adjustment in position maintains the brake systems' ability to apply the correct amount of braking force by ensuring the brake shoe is applied appropriately to the wheel to achieve optimal braking capability. TMBs are an approach to mounting brakes on freight car designs for which body-mounted brakes are not suitable. TMBs are free-standing equipment that do not require additional rigging and so are significantly lighter than body-mounted brakes. They are commonly used for special lightweight or low profile freight car designs. Empty load devices are incorporated into every freight car and detect when a freight car is empty. The empty load device relays this information to the brake system control board, which is then able to reduce the amount of braking force applied to the brakes on a freight car that is empty so that it decelerates in concert with the remainder of the freight cars in tow. A brake cylinder is a component of a freight car brake system that converts compressed air into mechanical force to apply the brake shoe to the wheel in order to stop or slow the train.

2. U.S. Market for Freight Brake Control Valves and Co-Valves

The Complaint also alleges likely harm in a distinct product market for freight car brake control valves and the associated co-valves that are typically sold with them. The control valve, often described as the brain of a freight car's brake system, regulates the flow of air to engage or disengage the brakes. A control valve is the most highly-engineered, technologically-sophisticated component in a freight car brake system. Without it, a supplier cannot offer a complete freight car brake system. The development of a control valve also requires significant development time and financial resources. In addition, it faces one of the railroad freight industry's lengthiest and most rigorous testing and approval processes. This results in extremely high entry barriers for this market.

Working closely with the control valve are its complementary valves: The dirt collector, angle cock, and vent valve (collectively, ''co-valves''). A dirt collector is a ball style cut-out-cock with a dirt chamber that is installed adjacent to the control valve. It allows for impurities in the air compressor to be filtered out to keep the air lines feeding the braking system clear of obstructions that would reduce air pressure. An angle cock is placed at the end of the brake pipe and provides a means for closing the brake pipe at the end of the freight car. A vent valve is a device on a freight car that reacts to a rapid drop in brake pipe pressure and is used to exhaust air from the brake pipe during emergency brake applications. These co-valves are an essential part of the development, manufacture, and sale of control valves, and for new freight car builds, sales of co-valves correlate with the sale of the control valve.

The market for the development, manufacture, and sale of control valves is characterized by a century-old duopoly between Wabtec and another manufacturer. Over the past five years, Wabtec had approximately 40 percent of the U.S. control valve market and its rival had the other 60 percent of the market.

On June 29, 2016, after a lengthy and expensive development process, Faiveley obtained conditional approval from the AAR to sell its control valve. In doing so, it become the first firm in over 25 years and only the second in the

last 50 years to develop a control valve and make substantial progress through the industry's formidable testing and approval process. Faiveley has built the first 200 units and satisfactorily completed all AAR laboratory tests. It projects sales of a few thousand units over the next few years as it works with railroads to continue to test and demonstrate the FTEN in various functional environments. Full commercialization and unconditional AAR approval is expected within seven years.

D. Geographic Market

As alleged in the Complaint, the United States is the relevant geographic market for the development, manufacture, and sale of freight brake components. Wabtec and Faiveley compete with each other for customers located throughout the United States.

When a geographic market is defined based on the location of customers, competitors in the market are firms that sell to customers in the specified region, even though some suppliers that sell into the relevant market may be located outside the geographic market. Before suppliers can sell components of freight car brake systems in the United States, they must receive AAR approval. The AAR's regulatory authority requires products be certified for interoperability within the U.S. freight rail network. Because these products are certified for use and sale anywhere in the United States, the regulatory framework determines which firms can supply the U.S. customer base, which supports a United States geographic market. Furthermore, suppliers of freight car brake systems and components typically deliver their products and services to customers' locations and are able to price discriminate based on customers' locations.

In addition, a small but significant increase in price of each of the foregoing components of a freight car brake system sold into the United States would not cause a sufficient number of U.S. customers to turn to providers of freight brake components sold into other countries because those products lack AAR approval and interoperability with U.S. freight rail networks.

E. Anticompetitive Effects

1. Freight Car Hand Brakes, Slack Adjusters, Truck-Mounted Brake Assemblies, Empty Load Devices, and Brake Cylinders

Wabtec and Faiveley presently compete vigorously in the development, manufacture, and sale of hand brakes, slack adjusters, TMBs, empty load devices, and brake cylinders, and because these markets are highly concentrated and subject to high entry barriers, unilateral anticompetitive effects would be likely to result from the acquisition. In each of the foregoing relevant markets, Wabtec and Faiveley presently compete against each other and another large competitor in a bargaining format where products are not highly differentiated by function or performance and price is the primary customer consideration, given that performance is presumed after approval by the industry's standard-setting body, the AAR. Given the nature and the extent of this competition, a merger between two competing sellers would remove a buyer's ability to negotiate these sellers against each other. The loss of this bargaining competition can significantly enhance the ability and incentive of the merged entity to obtain a result more favorable to it and less favorable to the buyer than the merging firms would have obtained separately, absent the merger. As its substantial market shares attest, customers derive significant benefits from having Faiveley in the market today. The resulting loss of a competitor and increased concentration of market share indicate that the acquisition likely will result in significant harm from expected price increases and decreases in quality of service if the proposed acquisition is consummated.

2. Freight Car Control Valves and Co-Valves

Wabtec and a second manufacturer are now the only unconditionally approved suppliers of freight car brake control valves. As the second-largest railway brake manufacturer in the world, Faiveley was uniquely positioned to enter this market because of both its general competency and the substantial progress it has already made in developing the product. Absent the merger it would have become the only other freight car brake control valve supplier.

The proposed acquisition would eliminate future competition for the development, manufacture, and sale of control valves by eliminating Faiveley's entry into this market. Faiveley's entry into the control valve market would have posed an immediate threat to the incumbent suppliers' by forcing them to compete aggressively or risk losing a sale to Faiveley. This market is also characterized by bargaining and price competition and involves the same competitive dynamics described above. Faiveley's customers would have enjoyed enhanced price competition immediately as Faiveley strove to gain quick acceptance of its control valve. Over the long term, the existence of Faiveley as a third supplier would have continued to enhance competition.

Without the required divestiture of assets, Wabtec's acquisition of Faiveley would have eliminated important head-to-head competition in the development, manufacture, and sale of freight car brake components and likely would have given Wabtec the incentive and ability to raise prices and decrease the quality of service provided to the railroad freight car industry. Absent the required divestiture of assets, the acquisition also would have eliminated a third potential supplier of control valves, thereby freezing in place a longstanding duopoly in that market.

F. Barriers to Entry

Given the substantial time required to develop and qualify a component of a freight car brake system, timely and sufficient entry by other competitors into any of the relevant markets, is unlikely to mitigate the harmful effects of the proposed acquisition. The likelihood of another potential entrant in the control valve market is particularly remote given the historical dearth of meaningful attempts to enter this market, as well as the substantial time and cost associated with entry into the control valve market.

III. Explanation of the Proposed Final Judgment

The divestitures required by the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in the relevant markets by establishing a new, independent, and economically viable competitor in the development, manufacture, and sale of freight car brake components by quickly transferring full ownership of the ARF joint venture to Amsted. It is also expected to eliminate the anticompetitive effects of the acquisition from the loss of competition in the development, manufacture, and sale of brake control valves by transferring to Amsted all assets relating to the FTEN control valve project, including the FTEN valve itself, as well as dirt collectors, angle cocks, and vent valves.

Paragraph II(G) of the proposed Final Judgment defines the Divestiture Assets to include all assets owned or under the control of Faiveley at the current ARF facility in Greenville, South Carolina, and include Faiveley's full and complete interest, rights, and property in ARF and the FTEN control valve. The Divestiture Assets include all tangible assets relating to ARF and the FTEN control valve, including, but not limited

to, research and development activities; all manufacturing equipment, tooling and fixed assets, including, at the option of the Acquirer, the braking simulation testing equipment known as the ''whale'' located at Greenville, South Carolina, personal property, inventory, office furniture, materials, supplies, and other tangible property; all licenses, permits and authorizations issued by any governmental organization; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings, including supply agreements; all customer lists, contracts, accounts, and credit records; all repair and performance records, and all other records.

The Divestiture Assets also include all intangible assets relating to ARF and the FTEN control valve, including, but not limited to, all patents, licenses and sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names, technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, all manuals and technical information Faiveley provides to its own employees, customers, suppliers, agents or licensees, and all research data, including, but not limited to, designs of experiments, and the results of successful and unsuccessful designs and experiments.

Paragraph IV(A) of the proposed Final Judgment requires Defendants, within twenty (20) calendar days after the signing of the Hold Separate Stipulation and Order in this matter to divest the Divestiture Assets in a manner consistent with the Final Judgment to Amsted or an Acquirer acceptable to the United States, in its sole discretion. The Divestiture Assets must be divested in such a way as to satisfy the United States in its sole discretion that they assets can and will be operated by the purchaser as a viable, ongoing business that can compete effectively in the relevant market. Defendants must take all reasonable steps necessary to accomplish the divestiture quickly and shall cooperate with the named acquirer (Amsted) or any other prospective purchaser. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances.

In the event that Defendants do not accomplish the divestiture within the period prescribed in the proposed Final Judgment, Paragraph V(A) of the proposed Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestiture. If a trustee is appointed, the proposed Final Judgment provides that Wabtec will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate, in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

Paragraph IV(I) of the proposed Final Judgment provides that final approval of the divestiture, including the identity of the Acquirer, is left to the sole discretion of the United States to ensure the continued independence and viability of the Divestiture Assets in the relevant markets. In this matter, Amsted has been identified as the expected purchaser of the Divestiture Assets and is currently in final negotiations with Defendants for a purchase agreement. After a thorough examination of Amsted, its plans for the Divestiture Assets and the proposed sale agreements, as well as consideration of feedback from customers, the United States approved Amsted as the buyer. Amsted is a strong competitor in other freight car equipment such as bogies, wheels, and axles. It is uniquely positioned as the current face of Faiveley brake components to the marketplace (through ARF) and has been the expected conduit through which FTEN was to be marketed by Faiveley absent the merger. Amsted's intimate familiarity with the products, the personnel, the AAR approval process, and the relevant customers should ensure that in its hands the Divestiture Assets will provide meaningful competition.

Under Paragraph IV(I) of the proposed Final Judgment, in the event Amsted is unable to acquire the Divestiture Assets, another Acquirer may purchase the Divestiture Assets, subject to approval by the Department in its sole discretion. The divestiture of assets must be accomplished as a single divestiture of all the Divestiture Assets to a single Acquirer. The Divestiture Assets may not be sold piecemeal. This is to protect the integrity of the Divestiture Assets as an ongoing, viable business and to enable the existing business to continue as a vigorous competitor in the future.

Section XI of the proposed Final Judgment requires Wabtec to provide notification to the Antitrust Division of certain proposed acquisitions not otherwise subject to filing under the Hart-Scott Rodino Act, 15 U.S.C. 18a (the ''HSR Act''), and in the same format as, and per the instructions relating to the notification required under that statute. The notification requirement applies in the case of any direct or indirect acquisitions of any assets of or interest in any entity engaged in certain activities relating to freight car brake systems or components in the United States. Section XI further provides for waiting periods and opportunities for the United States to obtain additional information similar to the provisions of the HSR Act before such acquisitions can be consummated.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this

Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's Internet Web site and, under certain circumstances, published in the **Federal Register**.

Written comments should be submitted to: Maribeth Petrizzi, Chief, Litigation II Section, 450 Fifth Street NW., Suite 8700, Antitrust Division, United States Department of Justice, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against Wabtec's acquisition of Faiveley. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition for the development, manufacture, and sale of certain components of a freight car brake system, including hand brakes, slack adjusters, truck-mounted brake assemblies, empty load devices, brake cylinders, and control valves, in the relevant markets identified by the United States. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment is ''in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

> (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

Id. at § 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States* v. *U.S. Airways Group, Inc.,* 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (noting that the court's ''inquiry is limited'' because the government has ''broad discretion'' to determine the adequacy of the relief secured through a settlement); *United States* v. *InBev N.V./S.A.,* No. 08–1965 (JR), 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable.'').[1]

As the United States Court of Appeals for the District of Columbia Circuit has held, a court conducting inquiry under the APPA may consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[2] In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also U.S. Airways,* 8 F. Supp. 3d at 75 (noting that a court should not reject the proposed remedies because it believes others are preferable); *Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the government's prediction as to the effect of proposed remedies, its perception of

[1] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), *with* 15 U.S.C. 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

[2] *Cf. BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also U.S. Airways,* 38 F. Supp. 3d at 76 (noting that room must be made for the government to grant concessions in the negotiation process for settlements (citing *Microsoft,* 56 F.3d at 1461); *United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *see also U.S. Airways,* 38 F. Supp 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable; *InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (concluding that ''the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60. As this Court confirmed in *SBC Communications,* courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2); *see also U.S. Airways,* 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language codified what Congress intended when it enacted the Tunney Act in 1974, as the author of this legislation, Senator Tunney explained: ''The court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11.[3] A court can make its public interest determination based on the competitive impact statement and response to public comments alone. *U.S. Airways,* 38 F. Supp. 3d at 76.

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: October 26, 2016.

Respectfully submitted,

/s/

DOHA MEKKI

[3] *See also United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); *United States* v. *Mid-Am. Dairymen, Inc.,* No. 73–CV–681–W–1, 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980, *22 (W.D. Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.''); S. Rep. No. 93–298, at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

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United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Westinghouse Air Brake Technologies Corp., Faiveley Transport S.A.,* and *Faiveley Transport North America,* Defendants.

Case No.: 1:16–cv–02147
Judge: Tanya S. Chutkan
Filed: 10/26/2016

Proposed Final Judgment

Whereas, Plaintiff, United States of America, filed its Complaint on October 26, 2016, the United States and defendants, Westinghouse Air Brake Technologies Corp., Faiveley Transport S.A., and Faiveley Transport North America, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And whereas, defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights and assets by the defendants to assure that competition is not substantially lessened;

And whereas, the United States requires defendants to make a certain divestiture for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, defendants have represented to the United States that the divestiture required below can and will be made and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *ordered, adjudged and decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. ''Acquirer'' means Amsted Rail Company, Inc., or another entity to which defendants divest the Divestiture Assets.

B. ''Wabtec'' means defendant Westinghouse Air Brake Technologies Corp., a Delaware corporation with its headquarters in Wilmerding, Pennsylvania, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''Faiveley'' means defendant Faiveley Transport S.A., a French corporation with its headquarters in Gennevilliers, France, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees. ''Faiveley'' includes defendant Faiveley Transport North America, a New York corporation headquartered in Greenville, South Carolina, a wholly-owned subsidiary of Faiveley Transport S.A.

D. ''Amsted'' means Amsted Rail Company, Inc., an Illinois corporation with its headquarters in Chicago, Illinois, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees. Amsted is a wholly-owned subsidiary of Amsted Industries Incorporated of Chicago, Illinois.

E. ''Amsted Rail Faiveley LLC'' means the ongoing business and all associated assets of a joint venture that currently exists between Faiveley and Amsted, was established in 2010 for the purpose of manufacturing and selling freight car brake components, and has headquarters located in Greenville, South Carolina.

F. ''FTEN control valve'' means the ongoing project and all associated assets of the freight car brake control valve for freight car brake systems developed or under development by Faiveley.

G. ''Divestiture Assets'' means:

1. Faiveley's full and complete interest, rights, and property in Amsted Rail Faiveley LLC and the FTEN control valve;

2. All tangible assets relating to Amsted Rail Faiveley LLC and the FTEN control valve, including, but not limited to, research and development activities; all manufacturing equipment, tooling and fixed assets, including, at the option of the Acquirer, the braking simulation testing equipment known as the ''whale'' located at the Greenville, South Carolina, personal property, inventory, office furniture, materials, supplies, and other tangible property; all licenses, permits and authorizations issued by any governmental organization; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings, including supply agreements; all customer lists, contracts, accounts, and credit records; all repair and performance records and all other records; and

3. All intangible assets relating to Amsted Rail Faiveley LLC and the FTEN control valve, including, but not limited to, all patents, licenses and sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, and service names; technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, and design tools and simulation capability; specifications for materials; specifications for parts and devices; safety procedures for the handling of materials and substances; quality assurance and control procedures; all manuals and technical information Faiveley provides to its own employees, customers, suppliers, agents or licensees; and all research data, including, but not limited to, designs of experiments, and the results of successful and unsuccessful designs and experiments.

III. Applicability

A. This Final Judgment applies to Wabtec and Faiveley, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Section IV and V of this Final Judgment, defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, they shall require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the Acquirer of the assets divested pursuant to this Final Judgment.

IV. Divestiture

A. Defendants are ordered and directed, within twenty (20) calendar days after the signing of the Hold Separate Stipulation and Order in this matter to divest the Divestiture Assets in a manner consistent with this Final Judgment to Amsted or an Acquirer acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest the Divestiture Assets as expeditiously as possible.

B. In the event defendants are attempting to divest the Divestiture Assets to an Acquirer other than Amsted, defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Defendants shall inform any person making an inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment.

C. In accomplishing the divestiture ordered by this Final Judgment, defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client privileges or work-product doctrine. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

D. Defendants shall provide the Acquirer and the United States information relating to Faiveley personnel with responsibilities for Amsted Rail Faiveley LLC or the FTEN control valve to enable the Acquirer to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer to employ any Faiveley employee whose primary responsibility is the production, development, and sale of products relating to Amsted Rail Faiveley LLC and the FTEN control valve.

E. Defendants shall permit the Acquirer of the Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities relating to the Divestiture Assets; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

F. Defendants shall warrant to the Acquirer(s) that each asset will be operational on the date of sale.

G. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

H. Defendants shall warrant to the Acquirer that there are no material defects in the environmental, zoning or other permits pertaining to the operation of each asset, and that following the sale of the Divestiture Assets, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

I. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by Divestiture Trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by the Acquirer as part of a viable, ongoing business in the design, development, manufacture, marketing, servicing, distribution, and sale of products relating to Amsted Rail Faiveley LLC and the FTEN control valve. The divestiture, whether pursuant to Section IV or V of this Final Judgment, shall be made to an Acquirer that, in the United States's sole judgment, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in the design, development, manufacture, marketing, servicing, distribution, and sale of products relating to Amsted Rail Faiveley LLC and the FTEN control valve; and that none of the terms of any agreement between the Acquirer and defendants give defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. Appointment of Divestiture Trustee

A. If defendants have not divested the Divestiture Assets within the time period specified in Paragraph IV(A), defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a Divestiture Trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a Divestiture Trustee becomes effective, only the Divestiture Trustee shall have the right to sell the Divestiture Assets. The Divestiture Trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the Divestiture Trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Paragraph V(D) of this Final Judgment, the Divestiture Trustee may hire at the cost and expense of defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the Divestiture Trustee, reasonably necessary in the Divestiture Trustee's judgment to assist in the divestiture. Any such investment bankers, attorneys, or other agents shall serve on such terms and conditions as the United States approves including confidentiality requirements and conflict of interest certifications.

C. Defendants shall not object to a sale by the Divestiture Trustee on any ground other than the Divestiture Trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the Divestiture Trustee within ten (10) calendar days after the Divestiture Trustee has provided the notice required under Section VI.

D. The Divestiture Trustee shall serve at the cost and expense of Wabtec pursuant to a written agreement, on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications. The Divestiture Trustee shall account for all monies derived from the sale of the assets sold by the Divestiture Trustee and all costs and expenses so incurred. After approval by the Court of the Divestiture Trustee's accounting, including fees for its services yet unpaid and those of any professionals and agents retained by the Divestiture Trustee, all remaining money shall be paid to Wabtec and the trust shall then be terminated. The compensation of the Divestiture Trustee and any professionals and agents retained by the Divestiture Trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the Divestiture Trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount. If the Divestiture Trustee and Wabtec are unable to reach agreement on the Divestiture Trustee's or any agent's or consultant's compensation or other terms and conditions of engagement within fourteen (14) calendar days of appointment of the Divestiture Trustee, the United States may, in its sole discretion, take appropriate action, including making a recommendation to the Court. The Divestiture Trustee shall, within three (3) business days of hiring any other professionals or agents, provide written notice of such hiring and the rate of compensation to defendants and the United States.

E. Defendants shall use their best efforts to assist the Divestiture Trustee in accomplishing the required divestiture. The Divestiture Trustee and any consultants, accountants, attorneys, and other agents retained by the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and defendants shall develop financial and other information relevant to such business as the Divestiture Trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information or any applicable privileges. Defendants shall take no action to interfere with or to impede the Divestiture Trustee's accomplishment of the divestiture.

F. After its appointment, the Divestiture Trustee shall file monthly reports with the United States and, as appropriate, the Court setting forth the Divestiture Trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The Divestiture Trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the Divestiture Trustee has not accomplished the divestiture ordered under this Final Judgment within six months after its appointment, the Divestiture Trustee shall promptly file with the Court a report setting forth (1) the Divestiture Trustee's efforts to accomplish the required divestiture, (2) the reasons, in the Divestiture Trustee's judgment, why the required divestiture has not been accomplished, and (3) the Divestiture Trustee's recommendations. To the extent such report contains information that the Divestiture Trustee deems confidential, such report shall not be filed in the public docket of the Court. The Divestiture Trustee shall at the same time furnish such report to the United States which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such

orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the Divestiture Trustee's appointment by a period requested by the United States.

H. If the United States determines that the Divestiture Trustee has ceased to act or failed to act diligently or in a reasonably cost-effective manner, it may recommend the Court appoint a substitute Divestiture Trustee.

VI. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, defendants or the Divestiture Trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or V of this Final Judgment. If the Divestiture Trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from defendants, the proposed Acquirer, any other third party, or the Divestiture Trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the Divestiture Trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed Acquirer, any third party, and the Divestiture Trustee, whichever is later, the United States shall provide written notice to defendants and the Divestiture Trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Paragraph V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or V shall not be consummated. Upon objection by defendants under Paragraph V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

VIII. Hold Separate

Until the divestiture required by this Final Judgment has been accomplished, defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture ordered by this Court.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V, defendants shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts defendants have taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

X. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of any related orders such as any Hold Separate Stipulation and Order, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

1. Access during defendants' office hours to inspect and copy, or at the option of the United States, to require defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of defendants, relating to any matters contained in this Final Judgment; and

2. to interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports or response to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(g) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(g) of the Federal Rules of Civil Procedure,'' then the United States shall give defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. Notification

A. Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the ''HSR Act''), during the term of this Final Judgment, Wabtec, without providing advance notification to the Antitrust Division, shall not directly or indirectly acquire any assets of or any interest, including, but not limited to, any financial, security, loan, equity, or management interest, in any entity engaged in the design, development, production (including the provision of any input product comprising five percent or more of the value of any final product), marketing, servicing, distribution, or sale of freight car brake systems or components thereof in the United States.

B. Such notification shall be provided to the Antitrust Division in the same format as, and per the instructions relating to the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested in Items 5 through 9 of the instructions must be provided only about freight car brake systems or components thereof described in Section V of the Complaint filed in this matter (including any input product comprising five percent or more of the value of any final product). Notification shall be provided at least thirty (30) calendar days prior to acquiring any such interest, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If within the thirty-day period after notification, representatives of the Antitrust Division make a written request for additional information, Wabtec shall not consummate the proposed transaction or agreement until thirty (30) calendar days after submitting all such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder. This Section shall be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this Section shall be resolved in favor of filing notice.

XII. No Reacquisition

Wabtec may not reacquire any part of the Divestiture Assets during the term of this Final Judgment.

XIII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIV. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

XV. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

_____

United States District Judge

[FR Doc. 2016–26781 Filed 11–4–16; 8:45 am]

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DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Fayez Sarofim; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Fayez Sarofim,* Civil Action No. 1:16–cv–02156. On October 27, 2016, the United States filed a Complaint alleging that Fayez Sarofim violated the premerger notification and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a, with respect to his acquisitions of voting securities of Kinder Morgan, Inc. and Kemper Corporation. The proposed Final Judgment, filed at the same time as the Complaint, requires Fayez Sarofim to pay a civil penalty of $720,000.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's Web site at *http://www.justice.gov/atr* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's Web site, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments should be directed to Daniel P. Ducore, Special Attorney, United States, c/o Federal Trade Commission, 600 Pennsylvania Avenue NW., CC–8416, Washington, DC 20580 (telephone: 202–326–2526; email: *dducore@ftc.gov*).

Patricia A. Brink,

Director of Civil Enforcement.

In the United States District Court for the District of Columbia

UNITED STATES OF AMERICA, c/o Department of Justice, Washington, D.C. 20530, Plaintiff, v. *Fayez Sarofim, Two Houston Center, Suite 2907, Houston, TX 77010*, Defendant.

Case No.: 1:16–cv–02156
Judge: Rudolph Contreras
Filed: 10/27/2016

Complaint for Civil Penalties for Failure To Comply With the Premerger Reporting and Waiting Requirements of the Hart–Scott Rodino act

The United States of America, Plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States and at the request of the Federal Trade Commission, brings this civil antitrust action to obtain monetary relief in the form of civil penalties against Defendant Fayez Sarofim (''Sarofim''). Plaintiff alleges as follows:

Nature of the Action

1. Sarofim violated the notice and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a (''HSR Act'' or ''Act''), with respect to the acquisition of voting securities of Kinder Morgan, Inc. (''KMI'') and Kemper Corporation (''Kemper'').

Jurisdiction and Venue

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 7A(g) of the Clayton Act, 15 U.S.C. 18a(g), and pursuant to 28 U.S.C. 1331, 1337(a), 1345, and 1355 and over the Defendant by virtue of Defendant's consent, in the Stipulation relating hereto, to the maintenance of this action and entry of the Final Judgment in this District.

3. Venue is properly based in this District by virtue of Defendant's consent, in the Stipulation relating hereto, to the maintenance of this action and entry of the Final Judgment in this District.

The Defendant

4. Defendant Sarofim is a natural person with his principal office and place of business at Two Houston Center, Suite 2907, Houston, TX 77010. Sarofim is engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. 12, and Section 7A(a)(1) of the Clayton Act, 15 U.S.C. 18a(a)(1). At all times relevant to this complaint, Sarofim had sales or assets in excess of $151.7 million.

Other Entities

5. KMI is a corporation organized under the laws of Delaware with its principal place of business at 1001 Louisiana Street, Houston, TX 77002. KMI is engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. 12, and Section 7A(a)(1) of the Clayton Act, 15 U.S.C. 18a(a)(1). At all times relevant to this complaint, KMI had sales or assets in excess of $15.3 million.

6. Kemper is a corporation organized under the laws of Delaware with its principal place of business at One Kemper Drive, Long Grove, IL 60049. Kemper is engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. 12, and Section 7A(a)(1) of the Clayton Act, 15 U.S.C. 18a(a)(1). At all times relevant to this complaint, Kemper had sales or assets in excess of $15.3 million.

The Hart-Scott-Rodino Act and Rules

7. The HSR Act requires certain acquiring persons and certain persons whose voting securities or assets are acquired to file notifications with the federal antitrust agencies and to observe a waiting period before consummating certain acquisitions of voting securities or assets. 15 U.S.C. 18a(a) and (b). These notification and waiting period requirements apply to acquisitions that meet the HSR Act's thresholds. Prior to February 1, 2001, the HSR Act's reporting and waiting period requirements applied to most transactions where the acquiring person would hold more than $15 million of the acquired person's voting securities and/or assets, except for certain exempted transactions. As of February 1, 2001, the size of transaction threshold was increased to $50 million. In addition, there is a separate filing requirement for transactions in which the acquirer will hold voting securities in excess of $100 million, and for transactions in which the acquirer will hold voting securities in excess of $500 million. Since 2004, the size of person and size of transaction thresholds have been adjusted annually.

8. The HSR Act's notification and waiting period requirements are intended to give the federal antitrust agencies prior notice of, and information about, proposed transactions. The waiting period is also intended to provide the federal antitrust agencies with an opportunity to investigate a proposed transaction and to determine whether to seek an injunction to prevent the consummation of a transaction that may violate the antitrust laws.

9. Section (c)(9) of the HSR Act, 15 U.S.C. 18a(c)(9), exempts from the requirements of the HSR Act acquisitions of voting securities solely for the purpose of investment if, as a result of the acquisition, the securities acquired or held do not exceed ten percent of the outstanding voting securities of the issuer.

10. Pursuant to Section (d)(2) of the HSR Act, 15 U.S.C. 18a(d)(2), rules were promulgated to carry out the purposes of the HSR Act. 16 CFR 801–03 (''HSR Rules''). The HSR Rules, among other things, define terms contained in the HSR Act.

11. Pursuant to section 801.13(a)(1) of the HSR Rules, 16 CFR 801.13(a)(1), ''all voting securities of [an] issuer which will be held by the acquiring person after the consummation of an acquisition''—including any held before the acquisition—are deemed held ''as a result of'' the acquisition at issue.

12. Pursuant to sections 801.13(a)(2) and 801.10(c)(1) of the HSR Rules, 16 CFR 801.13(a)(2) and § 801.10(c)(1), the value of voting securities already held is the market price, defined to be the lowest closing price within 45 days prior to the subsequent acquisition.

13. Section 801.1(i)(1) of the HSR Rules, 16 CFR 801.1(i)(1), defines the term ''solely for the purpose of investment'' as follows:

> Voting securities are held or acquired ''solely for the purpose of investment'' if the person holding or acquiring such voting securities has no intention of participating in the formulation, determination, or direction of the basic business decisions of the issuer.

14. Section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1), provides that any person, or any officer, director, or partner thereof, who fails to comply with any provision of the HSR Act is liable to the United States for a civil penalty for each day during which such person is in violation. From November 20, 1996, through February 9, 2009, the maximum amount of civil penalty was $11,000 per day, pursuant to the Debt Collection Improvement Act of 1996, Public Law 104–134, 31001(s) (amending the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note), and Federal Trade Commission Rule 1.98, 16 CFR 1.98, 61 FR 54548 (Oct. 21, 1996). As of February 10, 2009, the maximum amount of civil penalty was increased to $16,000 per day, pursuant to the Debt Collection Improvement Act of 1996, Public Law 104–134, 31001(s) (amending the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note), and Federal Trade Commission Rule 1.98, 16 CFR 1.98, 74 FR 857 (Jan. 9, 2009). Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114–74, 701 (further amending the Federal Civil Penalties Inflation Adjustment Act of 1990), and Federal Trade Commission Rule 1.98, 16 CFR 1.98, 81 FR 42,476 (June 30, 2016), the maximum amount of civil penalty was increased to $40,000 per day.

Defendant's Violations of the HSR Act

Failure To File HSR Act Notifications in Connection With Acquisitions of KMI Voting Securities

15. Sarofim was an early investor in KMI and, by August 1999, held KMI shares valued at approximately $50 million. Sarofim's acquisitions of KMI securities up until that time were exempt under the HSR Act because they were covered by the Act's exemption of acquisitions made solely for the purpose of investment.

16. In October 1999, Sarofim became a member of the KMI board, a position that necessarily caused him to participate in the formulation, determination, or direction of the basic business decisions of KMI. As a result, Sarofim could no longer rely on the exemption for acquisitions made solely for the purpose of investment with regard to KMI. Sarofim continued to be a member of KMI's board through 2014.

17. On January 23, 2001, Sarofim acquired 237,500 shares of KMI on the open market. At the time of the acquisition, Sarofim already held voting securities of KMl. The value of the voting securities held by Sarofim after the acquisition was in excess of the then applicable $15 million size of transaction threshold.

18. Although he was required to do so, Sarofim did not file under the HSR Act prior to acquiring KMI voting securities on January 23, 2001, improperly relying on the exemption for acquisitions made solely for the purpose of investment.

19. Sarofim continued to acquire KMI voting securities, through open market purchases and otherwise.

20. On July 16, 2006, Sarofim acquired an additional 1,600 shares of KMI as compensation for serving on KMI's board. As a result of this acquisition, Sarofim held KMI voting securities valued in excess of $113.4 million, the adjusted $100 million threshold in effect at the time.

21. Although he was required to do so, Sarofim did not file under the HSR Act prior to acquiring KMI voting securities on July 16, 2006.

22. On May 30, 2007, Sarofim's KMI voting securities were converted into shares of Knight Holdco, LLC, later named Kinder Morgan Holdco, LLC. This transaction was exempt from the HSR premerger notification and waiting period requirements. After this transaction, Sarofim no longer held any voting securities of KMI.

23. On November 11, 2011, Sarofim's shares of Kinder Morgan Holdco, LLC were converted into voting securities of KMI. This transaction was exempt from the HSR premerger notification and waiting period requirements.

24. On October 25, 2012, Sarofim acquired 300,000 shares of KMI on the open market. As a result of this acquisition, Sarofim held KMI voting securities valued in excess of $682.1 million, the adjusted $500 million threshold in effect at the time.

25. Although he was required to do so, Sarofim did not file under the HSR Act prior to acquiring KMI voting securities on October 25, 2012.

26. Sarofim continued to acquire KMI voting securities, on the open market and otherwise, through at least June 4, 2014.

27. On November 21, 2014, Sarofim made three corrective filings under the HSR Act, for the three notification thresholds he crossed through the 2001, 2006, and 2012 acquisitions. The waiting period on the corrective filings expired on December 22, 2014.

28. Sarofim was in continuous violation of the HSR Act from January 23, 2001, when he acquired the KMI voting securities valued in excess of the HSR Act's then applicable $15 million size-of-transaction threshold, through May 30, 2007, when he no longer held voting securities of KMI.

29. Sarofim was again in continuous violation of the HSR Act from October 25, 2012, when he acquired the KMI voting securities valued in excess of the then $682.1 million threshold then in effect, through December 22, 2014, when the waiting period expired.

Failure To File HSR Act Notification in Connection With Acquisition of Kemper Voting Securities

30. Sarofim was an investor in Teledyne, Inc., an industrial conglomerate that owned Unitrin Inc., the predecessor company to Kemper. In 1990, Unitrin was spun off from Teledyne, and investors in Teledyne, including Sarofim, received pro-rata shares of Unitrin as a result. Sarofim joined the Unitrin board shortly after the spinoff.

31. On May 10, 2007, Sarofim acquired 10,000 shares of Unitrin Inc., the predecessor to Kemper, on the open market. At the time of the acquisition, Sarofim already held voting securities of Unitrin. The value of the voting securities held by Sarofim after the acquisition was in excess of the then applicable size-of-the-transaction threshold of $59.8 million.

32. At the time of the May 10, 2007 acquisition, Sarofim was a member of Unitrin's board of directors, and Sarofim continued to be a member of Kemper's board through 2014.

33. Because he was on the Unitrin board, Sarofim could not rely on the exemption for acquisitions solely for the purpose of investment.

34. Although he was required to do so, Sarofim did not file under the HSR Act prior to acquiring Unitrin voting securities on May 10, 2007.

35. Sarofim continued to acquire Unitrin/Kemper voting securities, through open market purchases and otherwise, through at least September 10, 2008.

36. On or about august 19, 2011, Unitrin changed its name to Kemper.

37. On November 21, 2014, Sarofim made a corrective filing under the HSR Act for the acquisition of Unitrin/Kemper voting securities. The waiting period on the corrective filings expired on December 22, 2014.

38. Sarofim was in continuous violation of the HSR Act from May 10, 2007, when he acquired the Unitrin voting securities valued in excess of the HSR Act's then applicable $59.8 million size-of-transaction threshold, through December 22, 2014, when the waiting period expired.

Requested Relief

Wherefore, Plaintiff requests:

a. That the Court adjudge and decree that Defendant Sarofim's acquisitions of KMI voting securities on January 23, 2001, July 16, 2006, and October 25, 2012, were violations of the HSR Act, 15 U.S.C. 18a; and that Defendant Sarofim was in violation of the HSR Act each day from January 23, 2001, through May 30, 2007, and from October 25, 2012, through December 22, 2014;

b. That the Court adjudge and decree that Defendant Sarofim's acquisition of Kemper voting securities on May 10, 2007, was a violation of the HSR Act, 15 U.S.C. 18a; and that Defendant Sarofim was in violation of the HSR Act each day from May 10, 2007, through December 22, 2014;

c. That the Court order Defendant Sarofim to pay to the United States an appropriate civil penalty as provided by the HSR Act. 15 U.S.C. 18a(g)(1), the Debt Collection Improvement Act of 1996, Public Law 104–134, 31001(s) (amending the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note), and Federal Trade Commission Rule 1.98, 16 CFR 1.98, 74 FR 857 (Jan. 9, 2009), and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114–74, 701 (further amending the Federal Civil Penalties Inflation Adjustment Act of 1990), and Federal Trade Commission Rule 1.98, 16 CFR 1.98, 81 FR 42,476 (June 30, 2016)

d. That the Court order such other and further relief as the Court may deem just and proper; and

e. That the Court award the Plaintiff its costs of this suit.

Dated: October 27, 2016

For the Plaintiff United States of America:

/s/

Renata B. Hesse,
D.C. Bar No. 466107,

Acting Assistant Attorney General Special Attorney, Department of Justice, Antitrust Division, Washington, DC 20530.

/s/

Daniel P. Ducore,
D.C. Bar No. 933721,

Special Attorney.

/s/

Roberta S. Baruch,
D.C. Bar No. 269266,

Special Attorney.

/s/

Kenneth A. Libby,

Special Attorney.

/s/

Jennifer Lee,

Special Attorney, Federal Trade Commission, Washington, DC 20580, (202) 326–2694.

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Fayez Sarofim*, Defendant.

Case No.: 1:16–cv–02156
Judge: Rudolph Contreras
Filed: 10/27/2016

Competitive Impact Statement

The United States, pursuant to the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement to set forth the information necessary to enable the Court and the public to evaluate the proposed Final Judgment that would terminate this civil antitrust proceeding.

I. Nature and Purpose of This Proceeding

On October 27, 2017, the United States filed a Complaint against Defendant Fayez Sarofim (''Sarofim''), related to Sarofim's acquisitions of voting securities of Kinder Morgan, Inc. (''KMI'') and Kemper Corporation (''Kemper'') between January 2001 and December 2014. The Complaint alleges that Sarofim violated Section 7A of the Clayton Act, 15 U.S.C. 18a, commonly known as the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the ''HSR Act''). The HSR Act provides that ''no person shall acquire, directly or indirectly, any voting securities of any person'' exceeding certain thresholds until that person has filed pre-acquisition notification and report forms with the Department of Justice and the Federal Trade Commission (collectively, the ''federal antitrust agencies'' or ''agencies'') and the post-filing waiting period has expired. 15 U.S.C. 18a(a). A key purpose of the notification and waiting period is to protect consumers and competition from potentially anticompetitive transactions by providing the agencies an opportunity to conduct an antitrust review of proposed transactions before they are consummated.

The Complaint alleges that Sarofim acquired voting securities of KMI and Kemper in excess of then-applicable statutory thresholds without making the required pre-acquisition HSR filings with the agencies and without observing the waiting period, and that Sarofim and each of KMI and Kemper met the applicable statutory size of person thresholds.

At the same time the Complaint was filed in the present action, the United States also filed a Stipulation and proposed Final Judgment that eliminates the need for a trial in this case. The proposed Final Judgment is designed to deter Sarofim's HSR Act violations. Under the proposed Final Judgment, Sarofim must pay a civil penalty to the United States in the amount of $720,000.

The United States and the Defendant have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the United States first withdraws its consent. Entry of the proposed Final Judgment would terminate this case, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violations of the Antitrust Laws

A. Sarofim's 2001, 2006, and 2012 Acquisitions of KMI Voting Securities

Sarofim is an investor. Sarofim is the second-largest shareholder in KMI. At all times relevant to the Complaint, Sarofim had sales or assets in excess of $151.7 million.

Headquartered in Houston, Texas, KMI is the largest energy infrastructure company in North America. At all times relevant to the Complaint, KMI had sales or assets in excess of $15.3 million.

Sarofim was an early investor in KMI and, by August 1999, held KMI shares valued at approximately $50 million. Sarofim's acquisitions of KMI securities up until that time were exempt under the HSR Act because they were covered by the Act's investment-only exemption, which exempts ''acquisitions, solely for the purpose of investment, of voting securities, if, as a result of such acquisition, the securities acquired or held do not exceed 10 per centum of the outstanding voting securities of the issuer.'' 15 U.S.C. 18a(c)(9). The HSR Rules provide that securities are held ''solely for the purpose of investment'' if the person holding or acquiring the securities has ''no intention of participating in the formulation, determination, or direction of the basic business decisions of the issuer.'' 16 CFR 801.1(i)(1).

In October 1999, Sarofim became a member of the KMI board, a position that necessarily caused him to participate in the formulation, determination, or direction of the basic business decisions of KMI. On January 23, 2001, Sarofim, while still a KMI board member, acquired 237,000 shares of KMI on the open market. As a result of this acquisition, Sarofim held KMI voting securities valued at over the $15 million HSR threshold that was then in place. Sarofim improperly relied on the investment-only exemption and did not make an HSR filing in connection with the 2001 acquisition.

Sarofim again failed to make HSR filings when he crossed the two subsequent filing thresholds related to his holdings in KMI. On July 16, 2006, Sarofim acquired 1,600 shares of KMI as compensation for serving on the KMI board. As a result of this acquisition, Sarofim held KMI voting securities valued over the $113.4 million filing threshold. On May 30, 2007, Sarofim's KMI voting securities were converted into shares of Knight Holdco, LLC, later named Kinder Morgan Holdco, LLC. This transaction was exempt from the HSR premerger notification and waiting period requirements. After this transaction, Sarofim no longer held any voting securities of KMI. On November 11, 2011, Sarofim's shares of Kinder Morgan Holdco, LLC were converted into voting securities of KMI. This transaction was exempt from the HSR premerger notification and waiting period requirements. Later, on October 25, 2012, Sarofim purchased 300,000 shares of KMI on the open market. As a result of that acquisition, Sarofim held KMI voting securities valued in excess of the $682.1 million filing threshold.

Sarofim made corrective HSR Act filings on November 21, 2014, after learning that he had improperly relied on the investment-only exemption and was obligated to file. The waiting period expired on December 22, 2014.

B. Sarofim's Acquisitions of Kemper Voting Securities

Kemper Corporation is an insurance holding company, with subsidiaries that provide automobile, homeowners, life, health, and other insurance products to individuals and businesses. At all times relevant to the Complaint, Kemper had sales or assets in excess of $15.3 million.

Sarofim was an investor in Teledyne, Inc., an industrial conglomerate that owned Unitrin Inc., the predecessor company to Kemper. In 1990, Unitrin was spun off from Teledyne, and investors in Teledyne, including Sarofim, received pro-rata shares of Unitrin as a result. Sarofim joined the Unitrin board shortly after the spinoff.

On May 10, 2007, Sarofim, while still a Unitrin board member, acquired 10,000 shares of Unitrin on the open market. As a result of the acquisition, Sarofim held Unitrin voting securities valued over $59.8 million, the threshold that was then in place. Sarofim again improperly relied on the investment-only exemption and did not make an HSR Act filing. Sarofim could not rely on the investment-only exemption because of his status as a Unitrin board member. Through at least September 10, 2008, Sarofim made numerous purchases of Unitrin voting securities on the open market without making HSR Act filings. On or about August 19, 2011, Unitrin changed its name to Kemper.

Sarofim made a corrective HSR Act filing on November 21, 2014, after learning that he had improperly relied on the investment-only exemption and was obligated to file. The waiting period expired on December 22, 2014.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment imposes a $720,000 civil penalty designed to deter the Defendant and others from violating the HSR Act. The United States adjusted the penalty downward from the maximum permitted under the HSR Act because the violations were inadvertent, the Defendant promptly self-reported the violations after discovery, and the Defendant is willing to resolve the matter by consent decree and avoid prolonged investigation and litigation. The relief will have a beneficial effect on competition because the agencies will be properly notified of future acquisitions, in accordance with the law. At the same time, the penalty will not have any adverse effect on competition.

IV. Remedies Available to Potential Private Litigants

There is no private antitrust action for HSR Act violations; therefore, entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust action.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and the Defendant have stipulated that the proposed Final Judgment may be entered by this Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry of the decree upon this Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with this Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's internet Web site and, under certain circumstances, published in the **Federal Register**. Written comments should be submitted to: Daniel P. Ducore, Special Attorney, United States, c/o Federal Trade Commission, 600 Pennsylvania Avenue NW., CC–8416, Washington, DC 20580, *Email: dducore@ftc.gov*.

The proposed Final Judgment provides that this Court retains jurisdiction over this action, and the parties may apply to this Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

As an alternative to the proposed Final Judgment, the United States considered pursuing a full trial on the merits against the Defendant. The United States is satisfied, however, that the proposed relief is an appropriate remedy in this matter. Given the facts of this case, including the Defendant's self-reporting of the violation and willingness to promptly settle this matter, the United States is satisfied that the proposed civil penalty is sufficient to address the violation alleged in the Complaint and to deter violations by similarly situated entities in the future, without the time, expense, and uncertainty of a full trial on the merits.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The APPA requires proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the court shall determine whether entry of the proposed Final Judgment is ''in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

> (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

Id. § 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one, as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States* v. *U.S. Airways Group, Inc.,* 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (noting that the court's ''inquiry is limited'' because the government has ''broad discretion'' to determine the adequacy of the relief secured through a settlement); *United States* v. *InBev N.V./S.A.,* No. 08–1965 (JR), 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only

inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable.'').[1]

As the United States Court of Appeals for the District of Columbia Circuit has held, a court conducting an inquiry under the APPA may consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F.

Supp. 2d 37, 40 (D.D.C. 2001); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[2] In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also U.S. Airways,* 38 F. Supp. 3d at 75 (noting that a court should not reject the proposed remedies because it believes others are preferable); *Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom., Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also U.S. Airways,* 38 F. Supp. 3d at 76 (noting that room must be made for the government to grant concessions in the negotiation process for settlements (citing *Microsoft,* 56 F.3d at 1461)); *United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *see also U.S. Airways,* 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (concluding that ''the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60. As this Court confirmed in *SBC Communications,* courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2); *see also U.S. Airways,* 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language codified what Congress intended when it enacted the Tunney Act in 1974, as the author of this legislation, Senator Tunney, explained: ''The court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11.[3]

[1] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), *with* 15 U.S.C. 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

[2] *Cf. BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

[3] *See also United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); *United States* v. *Mid-Am. Dairymen, Inc.,* No. 73–CV–681–W–1, 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980, *22 (W.D. Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.''); S. Rep. No.

A court can make its public interest determination based on the competitive impact statement and response to public comments alone. *U.S. Airways,* 38 F. Supp. 3d at 76.

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Date: October 27, 2016

Respectfully Submitted,

/s/ Kenneth A. Libby

Kenneth A. Libby,

Special Attorney, U.S. Department of Justice, Antitrust Division, c/o Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580, Phone: (202) 326–2694, Email: klibby@ftc.gov.

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Fayez Sarofim*, Defendant.

Case No.: 1:16–cv–02156
Judge: Rudolph Contreras
Filed: 10/27/2016

Final Judgment

Plaintiff, the United States of America, having commenced this action by filing its Complaint herein for violation of Section 7A of the Clayton Act, 15 U.S.C. 18a, commonly known as the Hart-Scott-Rodino Antitrust Improvements Act of 1976, and Plaintiff and Defendant Fayez Sarofim, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by the Defendant with respect to any such issue:

Now therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon the consent of the parties hereto, it is hereby

Ordered, adjudged, and decreed:

I.

The Court has jurisdiction of the subject matter of this action and of the Plaintiff and the Defendant. The Complaint states a claim upon which relief can be granted against the Defendant under Section 7A of the Clayton Act, 15 U.S.C. 18a.

II.

Judgment is hereby entered in this matter in favor of Plaintiff United States of America and against Defendant, and, pursuant to Section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1), the Debt Collection Improvement Act of 1996, Public Law 104–134 § 31001(s) (amending the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461), and Federal Trade Commission Rule 1.98, 16 CFR 1.98, 61 FR 54549 (Oct. 21, 1996), and 74 FR 857 (Jan. 9, 2009), and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114–74 § 701 (further amending the Federal Civil Penalties Inflation Adjustment Act of 1990), and Federal Trade Commission Rule 1.98, 16 CFR 1.98, 81 FR 42,476 (June 30, 2016), Defendant Fayez Sarofim is hereby ordered to pay a civil penalty in the amount of seven hundred twenty thousand dollars ($720,000). Payment of the civil penalty ordered hereby shall be made by wire transfer of funds or cashier's check. If the payment is made by wire transfer, Defendant shall contact Janie Ingalls of the Antitrust Division's Antitrust Documents Group at (202) 514–2481 for instructions before making the transfer. If the payment is made by cashier's check, the check shall be made payable to the United States Department of Justice and delivered to: Janie Ingalls, United States Department of Justice, Antitrust Division, Antitrust Documents Group, 450 5th Street NW., Suite 1024, Washington, DC 20530.

Defendant shall pay the full amount of the civil penalty within thirty (30) days of entry of this Final Judgment. In the event of a default or delay in payment, interest at the rate of eighteen (18) percent per annum shall accrue thereon from the date of the default or delay to the date of payment.

III.

Each party shall bear its own costs of this action.

IV.

The entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Dated: _____

_____

United States District Judge

[FR Doc. 2016–26782 Filed 11–4–16; 8:45 am]

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93–298, at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

DEPARTMENT OF JUSTICE

[OMB Number 1105–0086]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Proposed Renewal, With Change, of a Previously Approved Collection Attorney Student Loan Repayment Program Electronic Forms

AGENCY: Department of Justice.

ACTION: CORRECTED 30 day notice.

SUMMARY: The Department of Justice (DOJ), Justice Management Division, Office of Attorney Recruitment and Management (OARM), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** at 81 FR 54604 on August 16, 2016, allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until December 7, 2016.

FOR FURTHER INFORMATION CONTACT: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the U.S. Department of Justice, Office of Attorney Recruitment and Management, 450 5th Street NW., Suite 10200, Attn: Deana Willis, Washington, DC 20530 or sent to *Deana.Willis@usdoj.gov.* Written comments and/or suggestions can also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(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 agencies estimate of the burden of the proposed collection of information;

(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:* Revision and renewal of a currently approved collection.

2. *The Title of the Form/Collection:* Attorney Student Loan Repayment Program Electronic Forms.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form Number: None. Office of Attorney Recruitment and Management, Justice Management Division, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals or households.

Other: None.

The Department of Justice Attorney Student Loan Repayment Program (ASLRP) is an agency recruitment and retention incentive program based on 5 U.S.C. 5379, as amended, and 5 CFR part 537. Anyone currently employed as an attorney or hired to serve in an attorney position within the Department may request consideration for the ASLRP. The Department selects new participants during an annual open season each spring and renews current beneficiaries who remain qualified for these benefits, subject to availability of funds. There are two application forms—one for new requests, and the other for renewal requests. A justification form (applicable to new requests only) and a loan continuation form complete the collection.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The Department anticipates about 275 respondents annually will complete the new request form and justification form and apply for participation in the ASLRP. In addition, each year the Department expects to receive approximately 110 applications from attorneys requesting renewal of the benefits they received in previous years. It is estimated that each new request (including justification) will take two (2) hours to complete, and each renewal request approximately 20 minutes to complete.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 586 hours, 40 minutes. It is estimated that new applicants will take 2 hours to complete the request form and justification and that current recipients requesting continued funding will take 20 minutes to complete a renewal form. The burden hours for collecting respondent data, 586 hours, 40 minutes, are calculated as follows: 275 new respondents × 2 hours = 550 hours, plus 110 renewing respondents × 20 minutes = 36 hours, 40 minutes.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: November 2, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–26823 Filed 11–4–16; 8:45 am]

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DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Amendment Under the Comprehensive Environmental Response, Compensation, and Liability Act

On November 1, 2016, the Department of Justice lodged a proposed Consent Decree Amendment with the United States District Court for the District of Oregon in the lawsuit entitled *United States* v. *Kerr-McGee Corp. et al.,* Civil Action No. 04–00032.

This Consent Decree Amendment resolves disputes with the remaining Defendants, formally dismisses Tronox Incorporated from the Decree, and largely terminates the ongoing Work obligations of the two remaining Defendants to the original 2005 Consent Decree: Fremont Lumber Company and Western Nuclear, Inc. This action involves the White King/Lucky Lass Superfund Site (''Site'') in Lakeview County, Oregon. Under the terms of the 2005 Decree, Defendants agreed to implement the remedial action at the Site, pay some past costs, perform a Supplemental Environmental Project, and undertake some further limited actions. The remedial action has been completed and all other obligations under the Decree, except Oversight and Maintenance (O&M) and Five Year Reviews, have been achieved.

The publication of this notice opens a period for public comment on the Consent Decree Amendment. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Kerr-McGee Corp. et al.,* Civil Action No. 04–00032, DJ Ref. No. 90–11–2–923/1. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree Amendment may be examined and downloaded at this Justice Department Web site: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Consent Decree Amendment upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $25.00 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the exhibits, the cost is $2.50.

Susan M. Akers,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2016–26822 Filed 11–4–16; 8:45 am]

BILLING CODE 4410–15–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (16–079)]

National Space-Based Positioning, Navigation, and Timing Advisory Board; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, and the President's 2004 U.S. Space-Based Positioning, Navigation, and Timing (PNT) Policy, the National Aeronautics and Space Administration (NASA) announces a meeting of the National Space-Based PNT Advisory Board.

DATES: Wednesday, December 7, 2016, 9:00 a.m. to 5:00 p.m.; and Thursday, December 8, 2016, 9:00 a.m. to 1:00 p.m., Local Time.

ADDRESSES: Crowne Plaza Redondo Beach, 300 North Harbor Drive, Redondo Beach, California 90277.

FOR FURTHER INFORMATION CONTACT: Mr. James J. Miller, Executive Director, PNT Advisory Board, Human Exploration and Operations Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4417, fax (202) 358–4297, or *jj.miller@nasa.gov*.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. Visitors will be requested to sign a visitor's register. The agenda for the meeting includes the following topics:

- Update on U.S. Space-Based PNT Policy and Global Positioning System (GPS) modernization.
- Prioritize current and planned GPS capabilities and services while assessing future PNT architecture alternatives with a focus on affordability.
- Examine methods in which to Protect, Toughen, and Augment (PTA) access to GPS/Global Navigation Satellite Systems (GNSS) services in key domains for multiple user sectors.
- Assess economic impacts of GPS on the United States and in select international regions, with a consideration towards effects of potential PNT service disruptions if radio spectrum interference is introduced.
- Review the potential benefits, perceived vulnerabilities, and any proposed regulatory constraints to accessing foreign Radio Navigation Satellite Service (RNSS) signals in the United States and subsequent impacts on multi-GNSS receiver markets.
- Explore opportunities for enhancing the interoperability of GPS with other emerging international GNSS.
- Examine emerging trends and requirements for PNT services in U.S. and international fora through PNT Advisory Board technical assessments, including back-up services for terrestrial, maritime, aviation, and space users.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2016–26761 Filed 11–4–16; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Council on the Arts and the Humanities Arts and Artifacts Indemnity Panel Advisory Committee

AGENCY: National Foundation on the Arts and the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is hereby given that the Federal Council on the Arts and the Humanities will hold a meeting of the Arts and Artifacts International Indemnity Panel.

DATES: The meeting will be held on Tuesday, November 29, 2016, from 12:00 p.m. to 5:00 p.m.

ADDRESSES: The meeting will be held by teleconference originating at the National Endowment for the Arts, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Elizabeth Voyatzis, Committee Management Officer, 400 7th Street SW., Room 4060, Washington, DC 20506, (202) 606 8322; *evoyatzis@neh.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the meeting is for panel review, discussion, evaluation, and recommendation on applications for Certificates of Indemnity submitted to the Federal Council on the Arts and the Humanities, for exhibitions beginning on or after January 1, 2017. Because the meeting will consider proprietary financial and commercial data provided in confidence by indemnity applicants, and material that is likely to disclose trade secrets or other privileged or confidential information, and because it is important to keep the values of objects to be indemnified, and the methods of transportation and security measures confidential, I have determined that that the meeting will be closed to the public pursuant to subsection (c)(4) of section 552b of Title 5, United States Code. I have made this determination under the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated April 15, 2016.

Dated: November 1, 2016.

Elizabeth Voyatzis,

Committee Management Officer.

[FR Doc. 2016–26878 Filed 11–4–16; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB Review; Comment Request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 81 FR 6544, and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission (including comments) may be found at: *http://www.reginfo.gov/public/do/PRAMain*.

Comments: Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions f the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on 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 should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725 17th Street NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 1265, Arlington, Virginia 22230 or send email to *splimpto@nsf.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

DATES: Comments regarding these information collections are best assured

of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: Awardee Reporting Requirements for the Experimental Program to Stimulate Competitive Research (EPSCoR) Research Infrastructure Improvement Programs

OMB Number: 3145—NEW

Expiration Date of Approval: Not applicable

Type of Request: Intent to seek approval to establish an information collection.

Abstract:

Proposed Project:

The mission of the National Science Foundation (NSF) is to promote the progress of science; to advance the national health, welfare, and prosperity; and to secure the national defense, while avoiding the undue concentration of research and education. In 1977, in response to congressional concern that NSF funding was overly concentrated geographically, a National Science Board task force analyzed the geographic distribution of NSF funds, which resulted in the creation of an NSF Experimental Program to Stimulate Competitive Research (EPSCoR). Congress specified two objectives for the EPSCoR program in the National Science Foundation Authorization Act of 1988: (1) To assist States that historically have received relatively little Federal research and development funding; and (2) to assist States that have demonstrated a commitment to develop their research bases and improve science and engineering research and education programs at their universities and colleges

The EPSCoR Research Infrastructure Improvement Programs advance science and engineering capabilities in EPSCoR jurisdictions for discovery, innovation and overall knowledge-based prosperity. These projects build human, cyber, and physical infrastructure in EPSCoR jurisdictions, stimulating sustainable improvements in their Research & Development (R&D) capacity and competitiveness.

EPSCoR projects are unique in their scope and complexity; in their integration of individual researchers, institutions, and organizations; and in their role in developing the diverse, well-prepared, STEM-enabled workforce necessary to sustain research competitiveness and catalyze economic development. In addition, these projects are generally inter- (or multi-)disciplinary and involve effective jurisdictional and regional collaborations among academic, government and private sector stakeholders that advance scientific research, promote innovation and provide multiple societal benefits; and they broaden participation in science and engineering by engaging multiple institutions and organizations at all levels of research and education, and people within and among (EPSCoR jurisdictions. These projects usually involve between 100 (Track-2) to 300 (Track-1) participants per year over the performance period and provide outreach experiences to thousands of K–12 students and teachers. America COMPETES Reauthorization Act of 2010, Section 517 (H.R. 5116, Section 517) requires NSF EPSCoR to submit annual reports to both Congress and OSTP that contains data detailing project progress and success (new investigators, broadening participation, dissemination of results, new workshops, outreach activities, proposals submitted and awarded, mentoring activities among faculty members, collaborations, researcher participating on the review process, etc.).

EPSCoR RII Track-1 and Track-2 projects are required to submit annual reports on progress and plans, which are used as a basis for performance review and determining the level of continued funding. To support this review and the management of an EPSCoR RII projects, teams are required to develop a set of performance indicators for building sustainable infrastructure and capacity in terms of a strategic plan for the project; measure performance and revise strategies as appropriate; report on the progress relative to the project's goals and milestones; and describe changes in strategies, if any, for submission annually to NSF. These indicators are both quantitative and descriptive and may include, for example, the characteristics of project personnel and students; aggregate demographics of participants; sources of financial support and in-kind support; expenditures by operational component; characteristics of industrial and/or other sector participation; research activities; workforce development activities; external engagement activities; patents and patent licenses; publications; degrees granted to students involved in project activities; and descriptions of significant advances and other outcomes of the EPSCoR project's efforts. Part of this reporting takes the form of several spreadsheets to capture specific information to demonstrate progress towards achieving the goals of the program. Such reporting requirements are included in the cooperative agreement which is binding between the awardee institution and NSF.

Each project's annual report addresses the following categories of activities: (1) Research, (2) education, (3) workforce development, (4) partnerships and collaborations, (5) communication and dissemination, (6) sustainability, (7) diversity, (8) management, and (9) evaluation and assessment.

For each of the categories the report is required to describe overall objectives for the year; specific accomplishments, impacts, outputs and outcomes; problems or challenges the project has encountered in making progress towards goals; and anticipated problems in performance during the following year.

Use of the Information: NSF will use the information to continue funding of the EPSCoR RII projects, and to evaluate the progress of the program.

The current RPPR is designed primarily to support reporting from individual investigators and nor for large centers/center-like programs involving hundreds of participants. The change would facilitate reporting better aligned with program goals and is expected to minimize reporting burden on the EPSCoR community and provide data as legislatively required for NSF EPSCoR.

Estimate of Burden: 100 hours per project for 65 projects for a total of 6,500 hours.

Respondents: Non-profit institutions; federal government.

Estimated Number of Responses per Report: One.

Dated: November 2, 2016.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2016–26826 Filed 11–4–16; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Renew an Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance of this collection. In accordance with the requirements of of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for no longer than three years.

DATES: Written comments on this notice must be received by January 6, 2017 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

FOR ADDITIONAL INFORMATION OR COMMENTS: Contact Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Room 1265, Arlington, Virginia 22230; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays). You also may obtain a copy of the data collection instrument and instructions from Ms. Plimpton.

SUPPLEMENTARY INFORMATION:

Title of Collection: Grantee Reporting Requirements for the Industry University Cooperative Research Centers Program (I/UCRC).

OMB Number: 3145–0088.

Expiration Date of Approval: March 31, 2017.

Type of Request: Intent to seek approval to renew an information collection.

Abstract: The Industry/University Cooperative Research Centers (I/UCRC) Program was initiated in 1973 to develop long-term partnerships among industry, academe and government. The National Science Foundation (NSF) invests in these partnerships to promote research programs of mutual interest, contribute to the Nation's research infrastructure base, enhance the intellectual capacity of the engineering or science workforce through the integration of research and education, and facilitate technology transfer. As appropriate, NSF encourages international collaborations that advance these goals within the global context.

The I/UCRC program seeks to achieve these goals by:

- Contributing to the nation's research enterprise by developing long-term partnerships among industry, academe, and government;
- Leveraging NSF funds with industry to support graduate students performing industrially relevant pre-competitive research;
- Expanding the innovation capacity of our nation's competitive workforce through partnerships between industries and universities; and
- Encouraging the nation's research enterprise to remain competitive through active engagement with academic and industrial leaders throughout the world.

To meet national needs, multi-university I/UCRCs are preferred to single-university I/UCRCs because multi-university Centers contribute to an increased research base as well as to increased interaction among Center participants. The Centers are catalyzed by an investment from NSF with primary support derived from the private and public sector. NSF takes a supporting role in the development and evolution of the I/UCRC, providing a framework for membership and operations as well as requirements derived from extensive Center experience and evaluation.

NSF invests in nationwide Centers that do not overlap in research foci with existing I/UCRCs. PIs should review the I/UCRC Center Directory found on the Program's Web page *http://www.nsf.gov/eng/iip/iucrc/* of potential overlaps prior to proposing a new Center. In the event of a potential overlap, the PIs should consider joining the already existing I/UCRC. The I/UCRC program initially offers five-year (Phase I) continuing awards. This initial five-year period of support allows for the development of a strong partnership between the academic researchers and interested industrial and government parties. A significant proportion of the Center's support for research projects is expected to come from industrial, state, and other funds. As a Center progresses, it is likely to have increased opportunities for funding from additional firms, other federal agencies and laboratories, and state and local governments; thus, increasing the leverage of NSF funds. After five years, Sites within Centers that continue to meet the I/UCRC Program requirements may request support for a second five-year (Phase II) period. Phase II grants allow Centers to continue to grow, and to leverage and diversify their memberships and research portfolio during their Phase II period. After ten years, Sites within Centers may apply for a third five-year (Phase III) period. Phase III awards are provided for Centers that demonstrate significant impact on industry research as measured through robust and sustained membership, student impact, annual reports, Site visits, and adherence to I/UCRC requirements. Centers are expected to be fully supported by private and public partners after fifteen years as an I/UCRC.

Centers will be required to provide data to NSF and its authorized representatives (contractors or grantees). These data will be used for NSF internal reports, historical data, and for securing future funding for continued I/UCRC program maintenance and growth. Updates to the IUCRC database of performance indicators will be required annually. Centers will be responsible for submitting the following information after the award expires for their fiscal year of activity. The indicators are both quantitative and descriptive.

- Quantitative information from the most recently completed fiscal year such as:
  - Number and diversity (race, gender, US, non-US) of students, faculty, and industrial numbers involved in the center
  - Students contact information
  - Degrees granted to students involved in center activities
  - Employer information of graduated students involved in center research activities (members and non-members) traceable by students' demographic information
  - Amounts and sources of income to the center, and
  - Lists of patents, licenses, and publications created
  - List of affiliated institutions/faculty (not official Sites in or faculty of the Center)
- Operating budget and total funding:
  - Total funding
  - NSF I/UCRC funding received
  - Other NSF funding received
  - Additional support broken down by Industry, State, University, Other Federal, Non-Federal and other support
  - Any contract income from IAB members that is done outside the IUCRC, but that is within the scope of the Center's topic
- Capital and in-kind support:
  - Equipment
  - Facilities
  - Personnel
  - Software
  - Other support
- Human resources:
  - Researchers (number of faculty scientists and engineers, number of non-faculty scientists and engineers)
  - Students (number of graduates, number of undergraduates)
  - Number of Postdoctoral fellows
  - Administration, number of full and part time professional and clerical staff

- ○ Information about broadening participation on the above with plans to increase broadening participation, if necessary
- ○ Industry Advisory Board members information (total number, number of new and leaving members by year, company size by number of employees and sector/sub-sector)
  - • Center director descriptors:
    - ○ Position and rank of director
- ○ Status of tenure
- ○ Estimate of the percent of time the director devotes to center administration, other administration, research, teaching, other
  - • Center outcomes:
- ○ Students receiving degrees and type degree earned
- ○ Students hired by industry (member and non-member) by type of degree
- ○ Publications
- ▪ Number with center research
- ▪ Number with Industrial Advisory Board Members
- ▪ Number of presentations at professional society meetings
- ▪ Number of presentations/booths at trade shows
- ▪ Number of presentations under different categories (symposia, etc) related to center activities
  - • Intellectual property events:
- ○ Invention disclosures
- ○ Patent applications
- ○ Software copyrights
- ○ Patents granted and derived or both
- ○ Licensing agreements
- ○ Royalties realized

I/UCRCs will also include evaluation conducted by independent assessment coordinator who cannot be from the department(s) with the institution(s) receiving funding for the I/UCRC award. The center assessment coordinator will be responsible for:

- ○ Preparing an annual report of center activities with respect to industrial collaboration
- ○ Conducting a survey of all center participants to probe the participant satisfaction with center activities
- ○ Compiling a set of quantitative indicators determined by NSF to analyze the management and operation of the center
- ○ Participating in I/UCRC center and informational meetings
- ○ Reporting to NSF on the center's status using a checklist provided by NSF to help determine if the center is adhering to the IUCRC policy and guidelines
- ○ Bi-annual reporting to NSF
- ○ Performing exit interviews to determine why members chose to withdraw from the center
- ○ Participating in continuous quality process improvement by providing information to the NSF I/UCRC program

Use of the Information: The data collected will be used for NSF internal reports, historical data, and for securing future funding for continued I/UCRC program maintenance and growth and maintenance of an alumni network of center participants.

Estimate of Burden: 150 hours per center (201 sites) for seventy centers for a total of 10,500 hours, subject to change in a near future as NSF is revising impact indicators, metrics and data collected, and a mechanism to collect them.

Respondents: Industry, academic institutions; non-profit institutions; government.

Estimated Number of Responses per Report: One from each of the 201 sites.

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 on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: November 2, 2016.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2016–26818 Filed 11–4–16; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting; National Science Board

The National Science Board, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended, (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of a revised schedule of meetings for the transaction of National Science Board business. This notice replaces in its entirety the notice that was published on November 3, 2016, at 81 FR 26632.

DATE AND TIME: November 8, 2016 from 8:00 a.m. to 5:10 p.m., and November 9, 2016 from 9:00 a.m. to 2:45 p.m. EST.

PLACE: These meetings will be held at the National Science Foundation, 4201 Wilson Blvd., Room 1235, Arlington, VA 22230. All visitors must contact the Board Office (call 703–292–7000 or send an email to *nationalsciencebrd@nsf.gov*) at least 24 hours prior to the meeting and provide your name and organizational affiliation. Visitors must report to the NSF visitor's desk in the lobby of the 9th and N. Stuart Street entrance to receive a visitor's badge.

WEBCAST INFORMATION: Public meetings and public portions of meetings will be webcast. To view the meetings, go to *http://www.tvworldwide.com/events/nsf/161108* and follow the instructions.

UPDATES: Please refer to the National Science Board Web site for additional information. Meeting information and schedule updates (time, place, subject matter, and status of meeting) may be found at *http://www.nsf.gov/nsb/meetings/notices.jsp.*

AGENCY CONTACT: John Veysey, *jveysey@nsf.gov,* 703–292–7000.

PUBLIC AFFAIRS CONTACT: Nadine Lymn, *nlymn@nsf.gov,* 703–292–2490.

STATUS: Portions open; portions closed.

OPEN SESSIONS:

November 8, 2016

8:00–9:20 a.m. Plenary introduction, NSB Chair and NSF Director Remarks
9:35–10:35 a.m. Committee on Strategy and Budget (CSB)
10:35–11:35 a.m. Committee on Audit and Oversight (A&O)
1:05–2:00 p.m. Committee on Science and Engineering Indicators (SEI)
2:00–4:00 p.m. Committee on Programs and Plans (CPP)
4:20–5:10 p.m. Joint session—CSB Subcommittee on Facilities (SCF) and CPP

November 9, 2016

1:00–2:45 p.m. (Plenary)

CLOSED SESSIONS:

November 9, 2016

9:00–10:05 a.m. (CSB)
10:05–10:25 a.m. (CPP)
10:45–11:10 a.m. (Plenary)
11:00–11:25 a.m. (Plenary Executive)

MATTERS TO BE DISCUSSED:

Tuesday, November 8, 2016

Plenary Board Meeting

Open session: 8:00–9:20 a.m.

- NSB Chair's Opening Remarks Announcement of New Members and Ceremonial Oath of Office

Overview of Major Issues for Meeting
Report on Site Visits
Highlights From Board Retreat
- NSF Director's Remarks
- Discussion of NSB Structure

Committee on Strategy and Budget

Open session: 9:35–10:35 a.m.
- CSB Chair's Opening Remarks
- Approval of Prior Minutes
- Update on FY 2017 Budget
- Ongoing Development of 2018–2022 Strategic Plan

Committee on Audit and Oversight (A&O)

Open session: 10:35–11:35 a.m.
- A&O Chair's Opening Remarks
OIG Semiannual Report
- Approval of Prior Minutes
- National Academy of Public Administration (NAPA) Report: Implementation of Recommendation on Management Fee
- Merit Review Pilot Report
- Inspector General's Update
Update on Financial Statement Audit
Introduction of New Inspector General for Audit
OIG FY 2017 Audit Plan
- Chief Financial Officer's Update
- NSF Intergovernmental Personnel Act Program Update

Committee on Science and Engineering Indicators (SEI)

Open session: 1:05–2:00 p.m.
- SEI Chair's Opening Remarks
- Approval of Prior Minutes
- Update on STEM Ph.D.s Career Pathways Companion Brief
- Discussion: *Indicators 2018* Overview and Transmittal Letter

Committee on Programs and Plans

Open session: 2:00–4:00 p.m.
- CPP Chair's Opening Remarks
- Approval of Prior Minutes
- CY 2017 Schedule of Planned Action and Information Items
- Review of NSB's Delegation of Award Authority
- Advanced Computing Infrastructure and Polar Realignment Updates
- Overview of BIO Portfolio: Status and Timelines

Joint Session of CSB Subcommittee on Facilities (SCF) and CPP

Open session: 4:20–5:10 p.m.
- Committee Chairs' Opening Remarks
- Approval of Prior Minutes
- Discussion of Facilities-Related Information Products
- Discussion of the Annual Facility Plan

MATTERS TO BE DISCUSSED:

Wednesday, November 9, 2016

Committee on Strategy and Budget
Closed session: 9:00–10:05 a.m.
- CSB Chair's Opening Remarks
- Approval of Prior Minutes
- Update on NSF FY 2018 Budget Request Development

Committee on Programs and Plans

Closed Session: 10:05–10:25 a.m.
- Committee Chair's Opening Remarks
- Approval of Prior Minutes
- NEON Operations and Maintenance Update

Plenary Board

Closed session: 10:45–11:00 a.m.
- NSB Chair's Opening Remarks
- Approval of Prior Minutes
- NSF Director's Remarks
- Closed Committee Reports

Plenary Board (Executive)

Closed session: 11:00 a.m.–11:25 a.m.
- NSB Chair's Opening Remarks
- Approval of Prior Minutes
- Recommendations for 2017 NSB Vannevar Bush and Public Service Awards

Plenary Board

Open session: 1:00–2:45 p.m.
- NSB Chair's Opening Remarks
- Approval of Prior Minutes
- NSF Director's Remarks
- Action Item: Changes to the Waterman Award Terms
- Changes to the Annual Facility Plan
- Discussion of Materials for the Presidential Transition
- Report from the Congressional Engagement Working Group
- Overview of NSF's Relocation
- Open Committee Reports
- Chair's Closing Remarks

MEETING ADJOURNS: 2:45 p.m.

Chris Blair,

Executive Assistant, National Science Board Office.

[FR Doc. 2016–26949 Filed 11–3–16; 4:15 pm]

BILLING CODE 7555–01–P

POSTAL SERVICE

Sunshine Act Meeting; Temporary Emergency Committee of the Board of Governors

DATES AND TIMES: October 28, 2016 at 1:30 p.m.

PLACE: Washington, DC, via Teleconference.

STATUS: *Committee Votes to Close October 28, 2016, Meeting:* By telephone vote on October 28, 2016, members of the Temporary Emergency Committee of the Board of Governors of the United States Postal Service met and voted unanimously to close to public observation its meeting held in Washington, DC, via teleconference. The Committee determined that no earlier public notice was possible.

MATTERS CONSIDERED:

Friday, October 28, 2016 at 1:30 p.m.

1. Pricing.

GENERAL COUNSEL CERTIFICATION: The General Counsel of the United States Postal Service has certified that the meeting was properly closed under the Government in the Sunshine Act.

CONTACT PERSON FOR MORE INFORMATION: Julie S. Moore, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260–1000, telephone (202) 268–4800.

Julie S. Moore,

Secretary, Board of Governors.

[FR Doc. 2016–26895 Filed 11–3–16; 11:15 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79210; File No. SR–NYSE–2016–68]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Price List

November 1, 2016.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on October 18, 2016, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List to change the manner by which rebates are payable, and level of such rebates, under the Liquidity Provider Incentive Program. The proposed rule change is available on the

[1] 15 U.S.C.78s(b)(1).
[2] 15 U.S.C. 78a.
[3] 17 CFR 240.19b–4.

Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to change the manner by which rebates are payable, and level of such rebates, under the Liquidity Provider Incentive Program.

Current Liquidity Provider Incentive Program

The Exchange proposes to change the manner by which rebates would be payable under the Liquidity Provider Incentive Program.[4] Pursuant to the Liquidity Provider Incentive Program, the Exchange currently pays Users of NYSE Bonds a monthly rebate provided Users who opt into the rebate program meet specified quoting requirements. Under the program, the rebate payable is based on the number of different bond issues (referred herein as ''CUSIPs'')[5] a User quotes. The rebate amount is tiered based on the number of CUSIPs quoted by a User, as follows:

Number of CUSIPs	Monthly rebate
400–599	$10,000
600–799	20,000
800 or more	30,000

To qualify for a rebate, a User is required to provide continuous two-sided quotes for at least eighty percent (80%) of the time during the Core Bond Trading Session[6] for a calendar month.[7] The Exchange currently calculates each participating User's quoting performance beginning each month on a daily basis, up to and including the last trading day of a calendar month, to determine at the end of each month each User's monthly average. Under the current program, Users must provide a two-sided quote for a minimum of hundred (100) bonds per side of the market with an average spread of half-point ($0.50) or less in CUSIPs whose average maturity is at least five (5) years as of the date the User provides a quote.

Revised Liquidity Provider Incentive Program

The Exchange proposes to replace the current requirements in the Liquidity Provider Incentive Program. As proposed, a daily rebate would be payable based on the number of CUSIPs on the NYSE Bonds Book for which a User meets the quoting requirements in one or more of three maturity classifications (referred to herein as ''maturity buckets'').

The proposed daily rebate amount is tiered based on the number of qualifying CUSIPs that meet quoting requirements, as follows:

Number of qualifying CUSIPs	Daily rebate
400–599	$500
600–799	1,000
800 or more	1,500

For a CUSIP to be included in the daily rebate calculation, the following three requirements must be met:

- First, a User must provide continuous two-sided quotes for a minimum of 100 bonds on either side of the market for at least eighty percent (80%) of the time during the Core Bond Trading Session each trading day. The Exchange will track throughout each trading day all CUSIPs a User quotes to determine the number CUSIPs that meet the size and time requirement noted above.
- Second, once the Exchange has determined the number of CUSIPs that meet the size and time requirement, the Exchange would next determine how many of such CUSIPs meet the spread requirement. In order for a CUSIP to be included in the daily rebate calculation, it must be among the CUSIPs in a particular Maturity Range for which a User's Maximum Daily Average Spread is:

Maturity range	Maximum daily average spread (in basis points) of all CUSIPs in maturity range
Less than 7 years	Equal to or less than 15.
7 years but less than 12 years	Equal to or less than 10.
12 years or more	Equal to or less than 10.

To derive the Maximum Daily Average Spread, the Exchange will determine the average bid and offer spread for each CUSIP within each Maturity Range for every User that provides a quote in a CUSIP. The average bid and offer spread would be calculated by taking the difference of the Yield-To-Worst (YTW) of the average bid and the YTW of the average offer throughout each trading day. The Exchange will then aggregate the average spreads of all the CUSIPs in each Maturity Range. If the aggregate average spread of all the CUSIPs is less than or equal to the Maximum Daily Average Spread, as provided in the table above, all such CUSIPs would qualify for a rebate provided the CUSIPs also meet the Minimum Daily Average Modified Duration requirement described below. If the average spread of all the CUSIPs is greater than the Maximum Daily Average Spread, the Exchange would eliminate CUSIPs with the widest spreads until the average spread of the remaining CUSIPS is equal

[4] *See* Securities Exchange Act Release Nos. 77591 (April 12, 2016), 81 FR 22656 (April 18, 2016) (SR–NYSE–2016–26); and 77812 (May 11, 2016), 81 FR 30594 May 17, 2016) (SR–NYSE–2016–34).

[5] CUSIP stands for Committee on Uniform Securities Identification Procedures. A CUSIP number identifies most financial instruments, including: Stocks of all registered U.S. and Canadian companies, commercial paper, and U.S. government and municipal bonds. The CUSIP system—owned by the American Bankers Association and managed by Standard & Poor's—facilitates the clearance and settlement process of securities. *See http://www.sec.gov/answers/cusip.htm.*

[6] The Core Bond Trading Session commences at 8:00 a.m. ET and concludes at 5:00 p.m. ET. *See* Rule 86(i)(2).

[7] For the first calendar month after a User opts in, the User is required to provide continuous two-sided quotes for fifty percent (50%) of the time during the Core Bond Trading Session.

to or less than the Maximum Daily Average Spread.

• Finally, of the CUSIPs that met the average spread requirement, the Exchange would determine how many of such CUSIPs meet the duration [8] requirement. In order for a CUSIP to be included in the daily rebate calculation, it must be among the CUSIPs in a particular Maturity Range for which a User's Minimum Daily Average Modified Duration is:

Maturity range	Minimum daily average modified duration of all CUSIPs in maturity range
Less than 7 years	Equal to or greater than 3.25.
7 years but less than 12 years	Equal to or greater than 6.75.
12 years or more	Equal to or greater than 14.50.

To derive the Minimum Daily Average Modified Duration, the Exchange will determine the average Modified Duration for each CUSIP within each Maturity Range for every User that provides a quote in a CUSIP. The average Modified Duration would be determined by the midpoint of the average bid and the average offer for each CUSIP quoted by a User throughout each trading day. The Exchange will then aggregate the average Modified Duration of all the CUSIPs in each Maturity Range. If the aggregate average Modified Duration of all the CUSIPs is greater than or equal to the Minimum Daily Average Modified Duration, as provided in the table above, all such CUSIPs would qualify for a rebate. If the average Modified Duration of all the CUSIPs is less than the Minimum Daily Average Modified Duration, the Exchange would eliminate CUSIPs with the lowest average Modified Duration until the average Modified Duration of the remaining CUSIPS is equal to or greater than the Minimum Daily Average Modified Duration.

The Exchange would then aggregate the maximum number of CUSIPs across each Maturity Range that a User meets the requirements above to determine such User's daily rebate.

The following example illustrates the proposed rebate:

User A provides two-sided quotes for a minimum of 100 bonds in a total of 900 CUSIPs on trading day 1. The 900 CUSIPs are comprised as follows: 300 CUSIPs that mature in less than 7 years, 400 CUSIPs that mature in 7 years but less than 12 years and 200 CUSIPs that mature in 12 years or more. The Exchange will track the number of CUSIPs (of the 900 CUSIPs) that were quoted for a minimum of 100 bonds on either side of the market for at least 80% of the time during the Core Bond Trading Session. At the end of trading day 1, let us assume that of the 900 CUSIPs, the following met the size and time requirement within each maturity bucket: 150 CUSIPs that mature in less than 7 years, 325 CUSIPs that mature in 7 years but less than 12 years and 125 CUSIPs that mature in 12 years or more.

As noted above, the Exchange would next determine the number of CUSIPs in each maturity bucket that meet the Maximum Daily Average Spread requirement. Let's assume that for the 325 CUSIPs that mature in 7 years but less than 12 years, the average spread of all 325 CUSIPs in this maturity bucket equals 12 basis points. Given that the Maximum Daily Average Spread for this maturity bucket must be equal to or less than 10 basis points, the Exchange would remove CUSIPs from this maturity bucket starting with the CUSIP with the widest average spread until the Maximum Daily Average Spread requirement is equal to or less than 10 basis points. Let us assume that removing 10 CUSIPs with the widest average spread brings the aggregate average spread to 10 basis points. Therefore, of the 325 CUSIPs that mature in 7 years but less than 12 years, 315 of such CUSIPs would deem to meet the Maximum Daily Average Spread requirement.[9]

As provided above, the Exchange would next determine the number of CUSIPs within each maturity bucket that meet the Minimum Daily Average Modified Duration requirement. Continuing with the example above, let us assume that the aggregate average Modified Duration of all 315 CUSIPs that mature in 7 years but less than 12 years is 6.50. Given that the Minimum Daily Average Modified Duration for this maturity bucket must be equal to or greater than 6.75, the Exchange would remove CUSIPs from this maturity bucket starting with the CUSIP with the lowest average Modified Duration until the Minimum Daily Average Modified Duration requirement is equal to or greater than 6.75. Let us assume that removing 15 CUSIPs with the lowest average Modified Duration brings the aggregate average Modified Duration to 6.75. Therefore, of the 315 remaining CUSIPs that mature in 7 years but less than 12 years, 300 of such CUSIPs would deem to meet the Minimum Daily Average Modified Duration requirement.[10]

Continuing with the example, let us assume the following represents the number of CUSIPs within each maturity bucket that meet the prescribed requirements at the end of trading day 1:

• 125 CUSIPs that mature in less than 7 years;

• 300 CUSIPs that mature in 7 years but less than 12 years; and

• 100 CUSIPs that mature in 12 years or more.

At the end of trading day 1, User A has met the prescribed quoting requirements in a total of 525 CUSIPs and would therefore qualify for a rebate of $500 for trading day 1.

The Exchange would make the determination of whether a User has met the prescribed quoting requirements each trading day to determine the

[8] The duration of a bond is a measure of its price sensitivity to interest rates movements, based on the average time to maturity of its interest and principal cash flows. Duration enables investor [sic] to more easily compare bonds with different maturities and coupon rates by creating a simple rule: With every percentage change in interest rates, the bond's value will decline by its modified duration, stated as a percentage. Modified duration is the approximate percentage change in a bond's price for each 1% change in yield assuming yield changes do not change the expected cash flows. For example, an investment with a modified duration of 5 years will rise 5% in value for every 1% decline in interest rates and fall 5% in value for every 1% increase in interest rates. Bond duration measurements help quantify and measure exposure to interest rate risks. Bond portfolio managers increase average duration when they expect rates to decline, to get the most benefit, and decrease average duration when they expect rates to rise, to minimize the negative impact. *See* duration risk at *http://www.sifma.org/education/glossary/#M.*

[9] If the average spread of all 325 CUSIPs had been 10 basis points then all 325 CUSIPs would have met the Maximum Daily Average Spread requirement and would qualify for the proposed daily rebate provided all 325 CUSIPs also meet the Minimum Daily Average Modified Duration requirement.

[10] If the aggregate average Modified Duration of all 315 CUSIPs that mature in 7 years but less than 12 years had been 6.75 then all 315 CUSIPs would have met the Minimum Daily Average Modified Requirement and would qualify for the proposed daily rebate.

amount of daily rebate for which a User qualifies. The Exchange would aggregate the daily rebate for each User and pay the total amount of the accumulated rebate to each User at the end of every month. The Exchange will continue to calculate each participating User's quoting performance on a daily basis.

Users who opt in to the Liquidity Provider Incentive Program are currently subject to a transaction fee for orders that provide liquidity to the NYSE Bonds Book of $0.50 per bond.[11] The Exchange proposes to eliminate the $0.50 per bond fee for providing liquidity. To reflect this change, the Exchange proposes to delete text from the Price List regarding the applicability of the $0.50 per bond fee for orders that provide liquidity to the NYSE Bonds Book.

The proposed rule change is intended to provide Users with a greater incentive to transact on the NYSE Bonds system.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[13] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that it is reasonable and equitable to amend the Liquidity Provider Incentive Program for the bonds trading platform, which would provide daily rebates to Users that meet unique quoting requirements. The Liquidity Provider Incentive Program is already available for Users and the Exchange is simply amending the quoting requirements which the Exchange believes could qualify greater number of Users for the proposed rebate. Further, the Exchange believes it is reasonable and equitable to adopt a daily rebate as an incentive for Users to provide liquidity on the Exchange's bond platform on a daily basis. The Exchange believes that the proposed quoting requirements to qualify for the daily rebate, which would be based on the average spread and average duration, are reasonable and would not unfairly discriminate between customers, issuers, and brokers or dealers because all member organizations that opt in to the Liquidity Provider Incentive Program would be subject to the same requirements. The Exchange further believes that the proposed quoting requirements are reasonable because they are designed to provide an incentive for member organizations to increase displayed liquidity at the Exchange, thereby increasing traded volume.

Recognizing the statements of Commissioners who have expressed concern about the state of the U.S. corporate and municipal bond markets as well as recommendations outlined in the Commission's release of its Report on the Municipal Securities Market (Report), the Exchange believes that amending the Exchange's transaction fees and rebates for the Bonds system would create an incentive for bonds traders to direct their liquidity to the Exchange, and therefore would be an important element in the democratization of the fixed income market.[14] As highlighted in SEC Chair White's statement during the SEC's 2013 Roundtable on Fixed Income Markets, the Report makes recommendations that include (1) improving pre- and post-trade transparency; (2) promoting the use of transparent and open trading venues, and (3) requiring dealers to seek ''best execution'' for customers and to provide customers with relevant pricing information in connection with their transactions.[15] Achieving these recommendations and applying them to both the municipal and corporate bond markets would, in the Exchange's view, assist in lowering the systemic risk that is anticipated to increase as interest rates rise and the closed network of bond trading comes under pressure as retirement and pension managers seek to adjust their positions.

The Exchange believes the proposed fee change is consistent with these principles and the proposed amendment to the Liquidity Provider Incentive Program is intended to provide additional liquidity to the market and add competition to the existing group of liquidity providers. The Exchange believes that by requiring Users to quote within the prescribed parameters for a percentage of the regular trading day, and by paying them a daily rebate for providing liquidity in large number of bonds, the Exchange is rewarding aggressive liquidity providers in the market, and by doing so, the Exchange will encourage the additional utilization of, and interaction with, the NYSE and provide customers with the premier venue for price discovery, liquidity, and competitive quotes.

Finally, the Exchange believes that the proposed rule change is equitable and not unfairly discriminatory in that it would apply uniformly to all Users accessing the NYSE Bonds system. All similarly situated Users would be subject to the same fee and rebate structure, and each User would have the ability to determine the extent to which the Exchange's proposed fee and rebate structure will provide it with an economic incentive to use the NYSE Bonds system, and model its business accordingly.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[16] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Debt securities typically trade in a decentralized OTC dealer market that is less liquid and transparent than the equities markets. The Exchange believes that the proposed change would increase competition with these OTC venues by creating additional incentives to engage in bonds transactions on the Exchange and rewarding market participants for actively quoting and providing liquidity in the only transparent bond market, which the Exchange believes will enhance market quality.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues that are not transparent. In such an environment, the Exchange must continually review, and consider adjusting its fees and rebates to remain competitive with other exchanges as well as with alternative trading systems and other venues that are not required to comply with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee

[11] The Exchange recently adopted a fee waiver applicable to Users that provide liquidity in 800 or more qualifying CUSIPs quoted on the NYSE Bonds Book, and a fee cap of $5,000 per month applicable to all Users that do not attain the fee waiver. *See* Securities Exchange Act Release No. 78108 (June 21, 2016), 81 FR 41636 (June 27, 2016) (SR–NYSE–2016–42).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4), (5).

[14] *See* SEC Report on the Municipal Securities Market, at *http://www.sec.gov/news/studies/2012/munireport073112.pdf*SEC's Gallagher Says Retail Bond Investors Fighting 'Headwinds' '', *http://www.bloomberg.com/news/2012-09-19/sec-s-gallagher-says-retail-bond-investors-fighting-headwinds-.html*

[15] *See* Opening remarks of Chairman Mary Jo White at SEC Roundtable on Fixed Income Markets. *http://www.sec.gov/News/Speech/Detail/Speech/1365171515300.*

[16] 15 U.S.C. 78f(b)(8).

changes in this market may impose any burden on competition is extremely limited. As a result of all of these considerations, the Exchange does not believe that the proposed change will impair the ability of member organizations or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [17] of the Act and subparagraph (f)(2) of Rule 19b–4 [18] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [19] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2016–68 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2016–68. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2016–68 and should be submitted on or before November 28, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Brent J. Fields,

Secretary.

[FR Doc. 2016–26789 Filed 11–4–16; 8:45 am]

BILLING CODE 8011–01–P

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(2).

[19] 15 U.S.C. 78s(b)(2)(B).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79209; File No. SR–NYSEArca–2016–138]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Options Fee Schedule Effective November 1, 2016

November 1, 2016.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on October 25, 2016, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fee Schedule (''Fee Schedule''). The Exchange proposes to implement the fee change effective November 1, 2016. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to provide for fees for manually executed Professional Customer orders, effective November 1, 2016.

Currently, the Exchange does not differentiate between Customer and Professional Customer orders for purposes of manual transaction fees, and Customers and Professional Customers are not charged any fee for orders executed in open outcry.[4]

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Per the Fee Schedule, ''[u]nless Professional Customer executions are specifically delineated, such executions will be treated as Customer executions for fee purposes.'' *See* Fee Schedule, *available here, https://www.nyse.com/publicdocs/*

Continued

The Exchange proposes to assess a fee of $0.25 per contract for Professional Customer orders that are executed manually, and to modify the Fee Schedule to reflect this change. This proposed assessment would mean Professional Customers are charged the same rate as Firms and Broker Dealers for manual orders.

The Exchange is not proposing any other modification to Transaction Fees at this time.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[6] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed change is reasonable, equitable and not unfairly discriminatory because Professional Customers submit more than 390 orders in listed options per day on average and generally engage in trading activity similar to non-Customers. Thus, the Exchange believes it is appropriate to charge Professional Customers the same fee it assesses Firms and Broker Dealers (*i.e.,* non-Customers) for manual transactions. In addition, the proposed change is competitive as other options exchanges likewise treat Professional Customers as non-Customers for purposes of order [sic] executed in open outcry.[7]

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[8] the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed change would continue to encourage competition by treating Professional Customers on the same basis as non-Customers. The Exchange's proposal does not place on undue burden on inter-market competition because other exchanges likewise charge Professional Customers the same rate as non-Customer for manual transactions.[9] The Exchange does not believe that the proposed change will impair the ability of any market participants or competing order execution venues to maintain their competitive standing in the financial markets.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the degree to which fee changes in this market may impose any burden on competition is extremely limited. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[10] of the Act and subparagraph (f)(2) of Rule 19b–4[11] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[12] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2016–138 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2016–138. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2016–138, and should be submitted on or before November 28, 2016.

nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4) and (5).

[7] *See, e.g.,* NYSE Amex Options fee schedule, *available here, https://www.nyse.com/publicdocs/nyse/markets/amexoptions/NYSE_Amex_Options_Fee_Schedule.pdf* (charging the Professional Customers the same rate as Broker Dealers and Firms); NASDAQ OMX PHLX fee schedule, *available here, http://www.nasdaqtrader.com/Micro.aspx?id=phlxpricing* (same).

[8] 15 U.S.C. 78f(b)(8).

[9] *See supra* note 6.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(2).

[12] 15 U.S.C. 78s(b)(2)(B).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Brent J. Fields,

Secretary.

[FR Doc. 2016–26788 Filed 11–4–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79213; File No. SR–NYSEMKT–2016–98]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Commentary .05 to Rule 980NY

November 1, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on October 25, 2016, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Commentary .05 to Rule 980NY(Electronic Complex Order Trading) to enhance the price protection filters applicable to electronically entered Complex Orders. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend Commentary .05 to Rule 980NY to enhance the Exchange's price protection filters applicable to electronically entered Complex Orders,[4] including by clarifying how the functionality operates and expanding its application, as described below.

Clarifying the Description of the Filter

Commentary .05 to Rule 980NY currently sets forth the Price Protection Filter (the ''Filter'') applicable to each incoming ''Electronic Complex Order'' (or ''ECO'').[5] The Filter automatically rejects incoming ECOs with a price that deviates from the current market by the Specified Amount,[6] which varies depending on the smallest MPV of any leg in the ECO.[7]

First, the Exchange proposes to modify its description of how the Filter operates to make it easier for market participants to understand. Commentary .05 to Rule 980NY currently describes the Filter as rejecting an ECO if ''the net debit/credit limit price of the order is greater (less) than the derived net debit/credit NBBO for the contra-side of that same strategy by an amount specified by the Exchange ('Specified Amount').'' The Exchange proposes to replace references to the ''derived contra-side net debit/credit NBBO'' with the ''contra-side Complex NBBO,'' as the Exchange has defined Complex NBBO since implementing the Filter.[8] This proposed modification would not affect the operation of the rule. Rather, the Exchange believes this change would reduce redundancy and add internal consistency to Exchange rules. Further, regarding the description of how the Filter operates, the Exchange proposes to provide that the Filter would reject an ECO back to the submitting ATP Holder if the sum of the following would be less than zero ($0.00):

(i) The net debit (credit) limit price of the order,

(ii) the contra-side Complex NBBO for that same Complex Order, and

(iii) the Specified Amount.[9]

The proposed modification does not alter how the Filter is applied. The Filter would continue to help prevent the execution of aggressively-priced ECOs (*i.e.,* priced so far away from the prevailing contra-side NBBO market for the same strategy) that could cause significant price dislocation in the market. The Exchange would continue to apply the Filter to help ensure that market participants do not receive an execution at a price significantly inferior to the contra-side NBBO. However, the proposed modification would add specificity and more clearly convey the operation of the Filter. The Exchange believes this proposed change would add clarity and transparency to the rule text and enable market participants to better understand the operation of the Filter, and the calculation that the Exchange applies to incoming ECOs without altering the operation of the Filter.

Second, the Exchange proposes to modify its explanation of how the Specified Amount may be adjusted based on the characteristics of the ECO. Currently, paragraphs (b)–(d) of Commentary .05 describe how the Filter ''will be applied by'' the Specified Amount, which Specified Amount is multiplied by the component of the leg ratio that the leg of the order

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Rule 900.3NY(e) defines a Complex Order as any order involving the simultaneous purchase and/or sale of two or more different option series in the same underlying security, for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purpose of executing particular investment strategy.

[5] Per Rule 980NY, an ECO is a Complex Order that has been entered into the NYSE Amex Options System (''System'') and routed to the Complex Matching Engine (''CME'') for possible execution. The CME is the mechanism in which ECOs are executed against each other or against individual quotes and orders in the Consolidated Book. ECOs that are not immediately executed by the CME are ranked in the Consolidated Book. *See* Rule 980NY(a).

[6] The Specified Amount is defined as: (i) .10 for orders where the smallest Minimum Price Variation (''MPV'') of any leg of the Electronic Complex Order is .01; (ii) .15 for orders where the smallest MPV of any leg of the Electronic Complex Order is .05; and.30 for orders where the smallest MPV of any leg of the Electronic Complex Order is .10. *See* Commentary .05 to Rule 980NY.

[7] *See* Commentary .05 to Rule 980NY(a). The Exchange notes that each ECO is entered into the System at a net debit (credit) price for the entire strategy and does not include specified prices for any single series component (''leg'') of the ECO. *See also* Securities and Exchange Act Release No. 70674 (October 11, 2013), 78 FR 62917 (October 22, 2013) (SR–NYSEMKT–2013–80) (Notice of filing, which describes the operation of the Filter) (herein referred to as the ''Original Release'').

[8] *See* Rule 900.2NY(41)(b) (defining Complex NBBO as ''the NBBO for a given complex order strategy as derived from the national best bid and national best offer for each individual component series of a Complex Order''). *See also* Securities and Exchange Act Release No. 73284 (October 1, 2014), 79 FR 60560 (October 7, 2014) (SR–NYSEMKT–2014–84) (Notice of filing and immediate effectiveness of proposed rule change to codify the term Complex NBBO).

[9] *See* proposed Commentary .05(a) to Rule 980NY.

represents.[10] The result is that the Specified Amount may change depending on the product of multiplying it by the component of the ECO ratio that the leg of the order represents, although the rule text does not explicitly state this fact.[11] The Exchange proposes to modify the rule text to make clear that the Specified Amount may be adjusted, which, in turn may affect how the Filter ''will be applied.'' As with the proposed modification to the description of how the Filter operates, this modification further clarifies (but does not alter) the operation of the Filter. The Filter would continue to prevent the execution of aggressively-priced ECOs that may cause significant price dislocation in the market. Specifically, the Exchange proposes to add new paragraph (b) to Commentary .05 to provide that ''[t]he Specified Amount may be adjusted based on the ratios and the MPVs of the legs of the [ECO].'' [12] The Exchange then proposes to renumber current paragraphs (b)–(d) of Commentary .05 to be sub-points (i)–(iii) to new paragraph (b) and to clarify in each sub-point how the Specified Amount will be adjusted.[13]

Current paragraph (b) to Commentary .05 provides that for ECOs ''that are entered on a 1x1 ratio, the Price Protection Filter will be applied by the Specified Amount (.10, .15, or .30),'' which, as noted above, means the Filter would be multiplied by the Specified Amount. In ECOs with a 1x1 ratio, the product of this multiplication would always result in .10, .15, or .30. Thus, the Exchange proposes to clarify this paragraph to provide that for ECOs ''that are entered on a 1x1 ratio, the Specified Amount is not adjusted (.10, .15, or .30).'' [14] The Exchange believes this proposed modification makes clear that the Specified Amount remains unadjusted for ECOs entered on a 1x1 ratio, which is consistent with the current rule text, but not explicitly stated.

In addition, current paragraph (c) to Commentary .05 provides that for ECOs ''that are entered on an uneven ratio (2x3 for example) where the MPV on all legs is the same, the Price Protection Filter will be applied by the Specified Amount multiplied by the smallest contract size leg of the ratio (.20, .30, or .60 on a 2x3 for example)''.[15] Rather than state that ''the Filter will be applied by the Specified Amount multiplied by the smallest contract size leg of the ratio,'' the Exchange proposes to clarify how the Specified Amount is adjusted, which is a more straightforward construction that the Exchange believes is easier to comprehend. Specifically, the Exchange proposes to clarify that for ECOs that are entered on an uneven ratio (2x3 for example) where the MPV on all legs is the same, ''the Specified Amount is adjusted by multiplying the component of the ratio represented by the smallest leg of the order by the Specified Amount (*i.e.,* .20 is the adjusted Specified Amount for a 2x3 Electronic Complex Order with an MPV of .01 on both legs because .20 (2 × .10) is less than .30 (3 × .10) for example).'' [16]

Further, current paragraph (d) to Commentary .05 provides that for ECOs ''that are entered on an uneven ratio where the MPV of the legs are not the same (2x3 ratio with a .10 MPV and .05 MPV for example), the Price Protection Filter will be applied by taking the lesser of; the Specified Amount applicable to the smallest size leg of the Electronic Complex Order multiplied by the contract size of that leg (.60 in this example), or the Specified Amount of the largest size leg of the Electronic Complex Order multiplied by the contract size of that leg (.45 in this example).'' [17] Utilizing the same calculation set forth in proposed paragraph (b)(ii) to Commentary .05, the Exchange likewise proposes to clarify how the Specified Amount is adjusted for ECOs that are entered on an uneven ratio where the MPV of the legs is not the same (a two-legged order with a 2x3 ratio where the first leg has a .10 MPV and the second leg has a .05 MPV for example). As proposed, ''the Specified Amount is equal to the smallest amount calculated by multiplying, for each leg of the order, the Specified Amount for the leg of the order by the component of the ratio represented by that leg of the order (*i.e.,* .45 is the adjusted Specified Amount in this example because .45 (3 × .15) is less than .60 (2 × .30).'' [18]

The Exchange believes that proposed paragraph (b) and sub-paragraphs (i)–(iii) clarify that the Specified Amount is adjusted based on the characteristics of the ECO, which is consistent with the current rule text but not stated explicitly. The Exchange believes this change, in turn, further clarifies (but does not alter) the operation of the Filter making it easier for market participants to understand.

To illustrate that the proposed modifications do not alter the operation of the Filter, the Exchange has applied the description of the Filter to the examples that the Exchange relied upon when the [sic] it introduced the Filter in 2013.[19]

Example #1: Proposed Rule 980NY(a),(b)

Jan 20 calls—NBBO 2.00–2.10
Jan 25 calls—NBBO 1.05–1.20

The Exchange receives an incoming ECO to buy Jan 20 calls and sell Jan 25 calls on a 1x1 ratio, with a net debit price of 1.25. All legs have an MPV of .05. In this case the contra-side Complex NBBO is offered at a net credit of 1.05 (this price is established by selling one Jan 20 for 2.10 and buying one Jan 25 for 1.05).

The ECO would be automatically rejected if the sum of the following is less than zero ($0.00):

(i) The net debit limit price of the order, in this case −1.25;

(ii) the contra-side Complex NBBO for that same Complex Order, in this case a net credit of 1.05;

(iii) and Specified Amount, in this case .15, as all legs have an MPV of .05.

The Filter would reject the ECO in this example back to the entering ATP holder because the sum is less than zero (−1.25 + 1.05 + .15 = −.05).[20]

Example #2: Proposed Rule 980NY(a),(b)(i)

Jan 20 calls—NBBO 5.00–5.30
Jan 25 calls—NBBO 2.10–2.20

The Exchange receives an incoming ECO to buy Jan 20 calls and sell Jan 25 calls on a 1x1 ratio, with a net debit price of 3.60. The leg markets have different MPVs—.05. and .10. In this case, the contra-side Complex NBBO is offered at a net credit of 3.20 (this price is established by selling one Jan 20 for 5.30 and buying one Jan 25 for 2.10).

The ECO would be automatically rejected if the sum of the following is less than zero ($0.00):

[10] *See* Commentary .05(b)–(d) to Rule 980NY.

[11] *See id. See also supra* note 7, Original Release 78 FR at 62919 (providing examples of how the Filter operates depending upon the leg ratio of the ECO).

[12] *See* proposed Commentary .05(b) to Rule 980NY.

[13] Consistent with this proposed change, the Exchange also proposes to redesignate paragraphs (e) and (f) of Commentary .05 to be paragraphs (c) and (d), respectively.

[14] *See* proposed Commentary .05(b)(i) to Rule 980NY.

[15] *See* Commentary .05(c) to Rule 980NY.

[16] *See* proposed Commentary .05(b)(ii) to Rule 980NY.

[17] *See* Commentary .05(c) to Rule 980NY.

[18] *See* proposed paragraph (b)(iii) of Commentary .05 to Rule 980NY.

[19] *See supra* note 7, Original Release, 78 FR at 62918–19 (setting froth [sic] five examples to illustrate the operation of the Filter).

[20] Per the Original Release, the ECO in this example was rejected by the Filter because the ''contra-side [Complex] NBBO of 1.05 is better than the limit price of the [ECO] by .20, which exceeds the Filter setting of .15.'' *See supra,* note 7, Original Release, 78 FR at 62918.

(i) The net debit limit price of the order, in this case −3.60;

(ii) the contra-side Complex NBBO for that same Complex Order, in this case a net credit of 3.20;

(iii) and Specified Amount, in this case .15 (*i.e.,* because the smallest MPV of any leg of the 1x1 ECO is .05; the other leg of the ECO has a larger MPV of .10).

The Exchange notes that, in this example, where the ECO is on a 1x1 ratio and the first leg has a .05 MPV and the second leg has a .10 MPV, the Specified Amount would be determined by the smallest MPV of any leg of the ECO. Thus, because the smallest MPV of this ECO is .05, the Specified Amount is .15 (as opposed to a Specified Amount of .30, which would be the Specified Amount if the smallest MPV of any leg of an ECO is .10). The Filter would reject the ECO in this example back to the entering ATP holder because the sum is less than zero (−3.60 + 3.20 + .15 = −.25).[21]

Example #3: Proposed Rule 980NY(a),(b)(i)

Jan 20 calls—NBBO 2.03–2.08
Jan 25 calls—NBBO 1.00–1.01

The Exchange receives an incoming Electronic Complex Order to sell Jan 20 calls and buy Jan 25 calls on a 1x1 ratio, with a net credit price of .90. All legs have the same MPV of .01: In this case the contra-side Complex NBBO market is priced at a net debit of 1.02 (this price is established by buying one Jan 20 for 2.03 and selling one Jan 25 for 1.01).

The ECO would be automatically rejected if the sum of the following is less than zero ($0.00):

(i) The net credit limit price of the order, in this case .90;

(ii) the contra-side Complex NBBO for that same Complex Order, in this case a net debit of −1.02;

(iii) and Specified Amount, in this case .10, because all legs have an MPV of .01.

The Filter would reject the ECO in this example back to the entering ATP holder because the sum is less than zero (.90 + (−1.02) + .10 = −.02).[22]

Example #4: Proposed Rule 980NY(a),(b)(ii)

Jan 20 calls—NBBO 2.03–2.08
Jan 25 calls—NBBO 1.00–1.02

The Exchange receives an incoming ECO to sell Jan 20 calls and buy Jan 25 calls, on a 2x3 ratio, with a net credit price of .75. All legs have the same MPV of .01. In this case the contra-side Complex NBBO market is priced at a net debit of 1.00 (this price is established by buying two Jan 20s for 2.03 each and selling three Jan 25s for 1.02 each (4.06–3.06 = 1.00)).

The ECO would be automatically rejected if the sum of the following is less than zero ($0.00):

(i) The net credit limit price of the order, in this case .75;

(ii) the contra-side Complex NBBO for that same Complex Order, in this case a net debit of −1.00;

(iii) and Specified Amount, in this case .20 (*i.e.,* .10 (as the MPV of both legs is .01) × 2 (the component of the ratio represented by the smallest leg of the order) = .20).

The Exchange notes that, in this example, where the ECO is on a 2x3 ratio and the MPVs on all legs is the same, the Specified Amount is adjusted by multiplying the component of the ratio represented by the smallest leg of the order by the Specified Amount (*i.e.,* .20 in this example where the MPV on both legs is .01 because .20 (2 × .10) is less than .30 (3 × .10).

The Filter would reject the ECO in this example back to the entering ATP holder because the sum is less than zero (.75 + (−1.00) + .20 = −.05).[23]

Example #5: Proposed Rule 980NY(a),(b)(iii)

Jan 20 calls—NBBO 4.10–4.20
Jan 25 calls—NBBO 1.90–2.00

The Exchange receives an incoming ECO to sell Jan 20 calls and buy Jan 25 calls, on a 2x3 ratio, with a net credit price of 1.50. The leg markets have different MPVs—.05. and .10, respectively. In this case the contra-side Complex NBBO market is priced at a net debit of 2.20 (this price is established by buying two Jan 20s for 4.10 each and selling three Jan 25s for 2.00 each (8.20 − 6.00 = 2.20)).

The ECO would be automatically rejected if the sum of the following is less than zero ($0.00):

(i) The net credit limit price of the order, in this case 1.50;

(ii) the contra-side Complex NBBO for that same Complex Order, in this case a net debit of −2.20;

(iii) and Specified Amount, in this case .45 (*i.e.,*.45 is equal to the smallest amount calculated by multiplying, for each leg of the order, the Specified Amount for the leg of the order by the component of the ratio represented by that leg of the order, which yields either .60 (2 × .30 = .60) or .45 (3 × .15 = .45)).

The Exchange notes that, in this example, where the ECO is on a 2x3 ratio and the MPV of the legs is not the same, the Specified Amount is equal to the smallest amount calculated by multiplying, for each leg of the order, the Specified Amount for the leg of the order by the component of the ratio represented by that leg of the order (*i.e.,* .45 is the adjusted Specified Amount in this example because .45 (3 × .15) is less than .60 (2 × .30)).

The Filer would reject this order back to the entering ATP holder because the sum is less than zero (1.50 + (−2.20 + .45 = −.25).[24]

Example #6: Proposed 980NY(a),(b)[25]

Jan 20 calls—NBBO 2.00–2.10
Jan 25 calls—NBBO 1.05–1.20

The Exchange receives an incoming ECO to buy Jan 20 calls and sell Jan 25 calls on a 1x1 ratio, with a net debit price of 1.19. All legs have an MPV of .05. In this case the contra-side Complex NBBO is offered at a net credit of 1.05 (this price is established by selling one Jan 20 for 2.10 and buying one Jan 25 for 1.05).

The ECO would be automatically rejected if the sum of the following is less than zero ($0.00):

(i) the net debit limit price of the order, in this case −1.19;

(ii) the contra-side Complex NBBO for that same Complex Order, in this case a net credit of 1.05;

(iii) and Specified Amount, in this case .15, as all legs have an MPV of .05.

The Filter would not reject the ECO in this example because the sum is zero or greater (−1.19 + 1.05 + .15 = .01).[26] The ECO would be sent to the CME for processing and potential execution.[27]

[21] Per the Original Release, the ECO in this example was rejected by the Filter because the ''contra-side [Complex] NBBO of 1.05 is better than the limit price of the [ECO] by .40, which exceeds the Filter setting of .15.'' *See supra,* note 7, Original Release, 78 FR at 62918.

[22] Per the Original Release, the ECO in this example was rejected by the Filter because the ''contra-side [Complex] NBBO of 1.02 is better than the limit price of the [ECO] by .12, which exceeds the Filter setting of .10.'' *See supra,* note 7, Original Release, 78 FR at 62919.

[23] Per the Original Release, the ECO in this example was rejected by the Filter because the ''contra-side [Complex] NBBO of 1.00 is better than the limit price of the [ECO] by .25, which exceeds the Filter setting of .20.'' *See supra,* note 7, Original Release, 78 FR at 62919.

[24] Per the Original Release, the ECO in this example was rejected by the Filter because the ''contra-side [Complex] NBBO of 2.20 is better than the limit price of the [ECO] by .70, which exceeds the Filter setting of .45.'' *See supra,* note 7, Original Release, 78 FR at 62919.

[25] The Exchange notes that Example #6 is new to this filing and was not included in the Original Release, as the Original Release did not include an example of an ECO that was not rejected by the Filter.

[26] Per the Original Release, the ECO in this example was rejected by the Filter because the ''contra-side [Complex] NBBO of 1.05 is better than the limit price of the [ECO] by .20, which exceeds the Filter setting of .15.'' *See supra,* note 7, Original Release, 78 FR at 62923.

[27] *See supra,* note 5 (citing Rule 980NY(a) regarding processing of incoming ECOs).

Extending the Operation of the Filter

The Exchange also proposes to modify paragraph (a) of Commentary .05 to Rule 980NY to expand the application of the Filter to ECOs received prior to the opening of trading or during a trading halt. The current Filter is applied only to those ECOs entered during Core Trading Hours.[28] As proposed, for each ECO received pre-open or during a trading halt, the Exchange would apply the Filter at the time all the individual component option series open or reopen, provided there is an NBBO market disseminated by OPRA for all individual component option series of the ECO. In this regard, the Exchange proposes to modify paragraph (e) of Commentary .05 of the Rule to remove reference to ''incoming'' and ''at the time the order is received by the Exchange,'' to signify that the Filter is being applied to ECOs received outside of Core Trading Hours.[29] Further, because ECOs received pre-open or during a halt cannot immediately execute, these ECOs would be placed in the Consolidated Book until the series opens or resumes trading, at which time the Filter would be applied before the ECO is eligible to trade.[30] Any ECOs that deviate from the current market by too great an amount, as set forth in the rule, would be canceled, as opposed to being immediately rejected upon receipt (as are ECOs received during Core Trading Hours).[31] The reason such ECOs would be cancelled (and not rejected) is because the CME would accept these orders and, once accepted but not immediately executed, they would be placed on the Consolidated Book until the individual component option series open or reopen.[32] The CME would not reject an ECO that it had previously accepted, and therefore such ECOs would be cancelled instead. The order sender would be notified of the cancellation. The proposed enhancement to the Filter is designed to provide the same level of protection to market participants who enter ECOs before the open or during a trading halt as is currently provided to ECOs received during Core Trading Hours. As proposed, the enhanced Filter would further assist the Exchange in preventing the execution of ECOs priced so far away from the prevailing contra-side NBBO market for the same strategy that the execution of such order could cause significant price dislocation in the market.

Additional Conforming Changes

Finally, the Exchange proposes to make several conforming changes to Rule 980NY(c)(i)(B) (Execution of Complex Orders at the Open), which are consistent with the proposal to incorporate the defined term Complex NBBO in proposed Commentary .05(a). First, the Exchange proposes to delete as duplicative the definition of the Complex NBBO that appears in Rule 980NY(c)(i)(B), as the term is now a defined in Rule 900.2NY(41)(b).[33] The Exchange also proposes to delete as extraneous the word ''derived,'' which precedes references to ''Complex NBBO.''[34] The Exchange notes that Rule 980NY(c)(i)(B) was updated to include the concept of the Complex NBBO before the Exchange codified this definition and the proposed changes would therefore streamline the rule text and remove redundancy from Exchange rules.[35]

Implementation

The Exchange will announce by Trader Update the implementation date of the proposed rule change to expand the application of the Filter to ECOs received prior to the opening of trading or during a trading halt.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[36] in general, and furthers the objectives of Section 6(b)(5) of the Act,[37] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that this proposed rule change would allow the Filter to continue to assist with the maintenance of fair and orderly market by helping to mitigate the risks associated with the execution of ECOs priced away from the current market by the Specified Amount, which protects investors from receiving potentially erroneous executions. In addition, the proposed modifications would add specificity and more clearly convey the operation of the Filter, which added clarity and transparency would enable market participants to better understand the operation of the Filter. Specifically, the proposal to modify existing rule text to more clearly state how the Filter is applied and to consistently incorporate the defined term ''Complex NBBO'' would remove impediments to and perfect the mechanism of a free and open market and protect investors and the public interest because such changes would reduce redundancy and add clarity, transparency and internal consistency to Exchange rules.

Further, the Exchange believes the proposal to make explicit that the Specified Amount is adjusted based on the characteristics of the ECO, which is consistent with the current rule text, would further clarify (without altering) the operation of the Filter making it easier for market participants to understand, which would protect investors and the public interest.

The proposal to extend the application of the Filter beyond ECOs entered during Core Trading Hours is designed to help maintain a fair and orderly market by providing market participants entering ECOs with additional protection from anomalous executions. Because the proposed Filter would apply to all ECOs, not just those entered during Core Trading Hours (absent a trading halt), the proposal would enhance the protection offered by the Filter and aid in mitigating the potential risks associated with the execution of any ECOs that are priced a Specified Amount away from the prevailing contra-side market. The proposed rule change would therefore remove impediments to and perfect the mechanism of a free and open market and national market system by ensuring that an existing price protection would be applicable to all ECOs, regardless of when they are entered.

[28] Rule 900.3NY(15) defines Core Trading Hours as the regular trading hours for business set forth in the rules of the primary markets underlying those option classes listed on the Exchange. An order received prior to the opening of trading would be outside of Core Trading Hours. Rule 953NY describes halts and suspensions of trading, which may occur during Core Trading Hours.

[29] *See* also proposed Commentary .05(e) to Rule 980NY. For internal consistency, the Exchange also proposes to refer to ''individual component option series'' in the proposed paragraph. *See id.*

[30] *See, e.g.,* Rule 980NY(a) (''[ECOs] that are not immediately executed by the CME are routed to the Consolidated Book'').

[31] *See* proposed Commentary .05(a) to Rule 980NY.

[32] *See supra* note 30.

[33] Specifically, the Exchange proposes to delete the following text from Rule 980NY(c)(i)(B): ''The derived Complex NBBO is calculated by using best prices for the individual leg markets comprising the Electronic Complex Order as disseminated by OPRA that when aggregated create a derived Complex NBBO for that same strategy The Exchange believes these changes would add clarity, transparency and internal consistency to Exchange rules.''

[34] *See* proposed Rule 980NY(c)(i)(B).

[35] *See* Securities and Exchange Act Release No. 72084 (May 2, 2014) 79 FR 26470(May 8, 2014) (SR–NYSEMKT–2014–42) (Notice of filing and immediate effectiveness of proposed rule change to adopt rules governing an opening auction process for ECOs, including reference to the ''Complex NBBO'').

[36] 15 U.S.C. 78f(b).

[37] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange is proposing to enhance an existing price protection Filter to provide greater protections from potentially erroneous executions and potentially reduce the attendant risks of such executions to market participants. Therefore, the Exchange believes that the proposal should provide an incentive for market participants to enter executable interest in the CME that can help foster price discovery and transparency thereby benefiting all market participants. The proposal is structured to offer the same enhancement to all market participants, regardless of account type, and will not impose a competitive burden on any participant.

The Exchange does not believe that the proposed enhancement would impose a burden on competing options exchanges. Rather, the availability of this enhanced Filter may foster more competition. Specifically, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. When an exchange offers enhanced functionality that distinguishes it from the competition and participants find it useful, it has been the Exchange's experience that competing exchanges will move to adopt similar functionality. Thus, the Exchange believes that this type of competition amongst exchanges is beneficial to the market place as a whole as it can result in enhanced processes, functionality, and technologies.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [38] and Rule 19b–4(f)(6) thereunder.[39] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b&4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [40] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[41] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange believes that waiver of the operative delay would be consistent with the protection of investors and the public interest because it would enable the Exchange to enhance an existing price protection Filter. Although the Exchange would cancel, as opposed to reject, an ECO received pre-open or during a halt that was deemed too aggressively priced by the Filter, the Exchange does not believe this operational distinction would prevent waiver of the operative delay. Rather, the Exchange believes that the proposed change would allow for the expansion of the Filter so that it would apply to ECOs submitted prior to the open of trading or during a trading halt when the individual component option series open or reopen. Thus, the Exchange believes that waiver of the operative delay would protect investors by enabling the Exchange to provide greater protections from potentially erroneous executions and potentially reduce the attendant risks of such executions to market participants. In addition, the Exchange could implement, without delay, the proposed clarifications to add transparency regarding how the Filter operates, including how the Specified Amount may be adjusted based on the characteristics of the ECO.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that the proposal will extend the existing price protection Filter, which currently applies only to ECOs received during Core Trading Hours, to ECOs received during the pre-open or during a trading halt. As noted above, the Filter is designed to protect investors from receiving anomalous or potentially erroneous executions. The proposal also provides for consistent use of defined terms in the Exchange's rules and clarifies the operation of the Filter, including the calculation of the Specified Amount, without altering the operation of the Filter. Accordingly, the Commission finds that waiving the 30-day operative delay is consistent with investors and the public interest and designates the proposal operative upon filing.[42]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [43] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2016–98 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2016–98. This file number should be included on the subject line if email is used. To help the

[38] 15 U.S.C. 78s(b)(3)(A).

[39] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b&4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[40] 17 CFR 240.19b–4(f)(6).

[41] 17 CFR 240.19b–4(f)(6)(iii).

[42] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[43] 15 U.S.C. 78s(b)(2)(B).

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–NYSEMKT–2016–98 and should be submitted on or before November 28, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[44]

Brent J. Fields,

Secretary.

[FR Doc. 2016–26795 Filed 11–4–16; 8:45 am]

BILLING CODE 8011–01–P

[44] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79212; File No. SR–OCC–2016–013]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Concerning the Options Clearing Corporation's Margin Coverage During Times of Increase Volatility

November 1, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 18, 2016, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by OCC. The Commission is publishing this notice to solicit comments on the rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

This proposed rule change by OCC would modify the current process for systematically monitoring market conditions and performing adjustments to its margin coverage when current market volatility increases beyond historically observed levels.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

OCC's margin methodology, the System for Theoretical Analysis and Numerical Simulations (''STANS''), is OCC's proprietary risk management system that calculates Clearing Members'[3] margin requirements.[4] STANS utilizes large-scale Monte Carlo simulations to forecast price movement and correlations in determining a Clearing Member's margin requirement.[5] The STANS margin requirement is a portfolio calculation at the level of Clearing Member legal entity marginable net positions tier account (tiers can be customer, firm, or market marker) and consists of an estimate of 99% 2-day expected shortfall and an add-on for model risk (the concentration/dependence stress test charge).

The majority of risk factors utilized in the STANS methodology are total returns on individual equity securities. Other risk factors considered include: Returns on equity indices; changes in the calibrated coefficients of a model describing the yield curve for U.S. government securities; ''returns'' on the nearest-to-expiration futures contracts of various kinds; and changes in foreign exchange rates. For the volatility of each risk factor, the Monte Carlo simulations use the greater of: (i) The short-term volatility level predicted by the model; and (ii) an estimate of its longer-run level. In between the monthly re-estimations of all the models, volatilities are automatically re-scaled to the greater of the short-term or the longer-run levels to mitigate pro-cyclicality[6] in the margin levels. (This daily volatility measure is called the ''uniform scale factor.'') The uniform scale factor is a multiplier used in connection with STANS calculations to account for, among other things, the difference between short-term and long-term volatility forecasts for equities. It is specifically defined as the ratio of long-run volatility (10Y+) over short-run volatility (2Y). It is used to ''scale up'' the short-run volatility of the securities (*e.g.,* IBM) that are subject to monthly update, in order to estimate long-run volatility. It is also used to capture data gaps between monthly updates.

An approach employed by OCC to mitigate pro-cyclicality within STANS is to estimate market volatility based on current market conditions (''current market estimate'') and compare this current market estimate to a long-run estimate of market volatility (''long-run market estimate''). This comparison utilizes certain market benchmarks (or factors), which serve as proxies for the overall volatility of an asset class or group of products. If the long-run market estimate for a factor is found to be greater than the current market estimate, the volatility estimates for all products tied to that factor are adjusted (or scaled) up in a manner proportionate to the relationship between the current market volatility and the long-run market volatility for that factor.

Current STANS includes a single factor (''uniform scale factor''), which serves as the proxy for the equity asset class. This uniform scale factor is calibrated based on changes in the volatility of the Standard & Poor's 500® Index (''SPX'') and applied to all ''equity-based products'' in the manner described above. Currently, the uniform scale factor is the only scale factor used in STANS. The proposed change is intended to enhance the STANS margin calculations by providing for the capability to increase the number of

[3] *See* OCC By-Laws Article 1(C)(14).

[4] *See* Securities Exchange Act Release No. 53322 (February 15, 2006), 71 FR 9403 (February 23, 2006) (SR–OCC–2004–20). A detailed description of the STANS methodology is available at *http://optionsclearing.com/risk-management/margins/*.

[5] *See* OCC Rule 601.

[6] A quality that is positively correlated with the overall state of the economy is deemed to be pro-cyclical.

scale factors used within STANS in cases where a more appropriate proxy has been identified for a particular asset class or group of products to measure the relationship between current vs. long-run market volatility.

Summary of the Proposed Change

OCC believes that the current approach to scale factors in STANS would be improved by providing the functionality to establish multiple scale factors intended to more accurately measure the relationship between current and long-run market volatility with proxies that correlate more closely to groups of products within an asset class (*e.g.,* Russell 1000 Index and Russell 1000 ETFs), which would enhance the accuracy of the margin requirements in STANS.[7] Furthermore, OCC can improve the resiliency of its risk management framework for non-equity asset classes where open interest cleared by OCC has grown, but where scale factors currently do not exist. By incorporating this process to scale margin coverages when current market volatility exceeds historically heightened levels that have been established to mitigate pro-cyclicality, OCC's margin methodology is able to expeditiously respond to severe changes in market volatility and thus better protect the integrity of our financial markets.

Scale Factor for Equity-Based Products

Current Uniform Scale Factor for Equity-Based Products

The uniform scale factor for the SPX roughly represents the ratio of OCC's estimates of the long-run market volatility to the forecast market volatility determined by most recent 24-month daily historical returns.[8] To determine the estimate of current market volatility, OCC relies on daily pricing information for equity securities and exchange-traded funds over a twenty-four month period ending with the last day of the immediately preceding month. To populate this twenty-four month time series, OCC relies on external vendors, with which it maintains redundant relationships for resiliency,[9] to adjust the daily pricing information to account for corporate actions involving these securities. This daily pricing information is received from its vendor(s) after the close of each month, at which time OCC updates its twenty-four month time series adding the new month and dropping the last month of data. This process of updating the time series on a monthly basis is referred to as a ''pending'' time series due to the batch process used to update the time series. The long-run time series used by the uniform scale factor is updated on a daily basis (*i.e.,* non-pending update) with pricing information for the SPX dating back to January 1, 1946. OCC calculates the uniform scale factor each business day by comparing the current market volatility, using pending price updates to the long-run time series using non-pending, or current, market prices.

The uniform scale factor is applied to all equity products and is used to adjust individual equity current market volatility estimates on a daily basis based on the comparison of the current market volatility and the long-run volatility estimate, which is updated daily. Should it be observed that the current market volatility is less than the long-run volatility, all products tied to the uniform scale factor will be adjusted higher based on the ratio of the long-run volatility estimate to the current market volatility estimate to account for the observed change in volatility. In addition, the uniform scale factor is also used to account for the fact that the distribution of returns for the SPX has a ''fat tail'' [10] because the scale factor seeks to match estimates of expected margin shortfalls under the scenarios in STANS for a hypothetical long position in the SPX.

The uniform scale factor resulting from the calculations described above is applied as a multiplier to hypothetical returns on a long portfolio of equities produced during the Monte Carlo market scenarios run within STANS. By ''scaling up'' hypothetical returns in this way, the uniform scale factor relies on an assumption that more recent behavior of SPX returns will provide an appropriate proxy for the volatility in equity price returns that occur between monthly updates of price data for the pending short-run time series. Accordingly, the uniform scale factor helps OCC set margin requirements that account for this proxy to ensure that Clearing Members maintain margin assets that would be sufficient in light of historical volatility of the SPX.

Proposed Changes to the Uniform Scale Factor for Equity-Based Products

The average longer-run volatility forecast used in OCC's computation of the uniform scale factor currently relies on daily pricing information for component securities of the SPX dating back to January of 1946. This time series predates, however, the 1957 introduction of the SPX. To accurately account for the behavior of SPX returns only since the inception of the index, OCC proposes to adjust the longer-run volatility forecast so that it would rely only on the post-1957 information. OCC believes that this approach would reduce model risk [11] and improve the quality of the data by avoiding the need to make assumptions related to the composition of the index before its actual development.[12]

Proposed New Scale Factors for Equity-Based Products

To more accurately measure the relationship between current and long-run market volatility with proxies that correlate more closely to certain products carried within the equity asset class, OCC proposes to expand the number of scale factors to include: (1) Russell 2000® Index (12/29/1978); (2) Dow Jones Industrial Average Index (9/23/1997); (3) NASDAQ–100 Index (2/4/1985) and (4) S&P 100 Index (1/2/1976).[13] While the SPX scale factor will continue to serve as the default scale factor for most equity products, the index options, futures and ETFs which map to these indexes will be assigned to these scale factors and whose current volatility estimates will be adjusted

[7] In this case, accuracy is measured against backtesting results. Pursuant to OCC's Model Risk Management Policy, an accurate 99% value-at-risk model should expect exceedances at a rate of 1% per independent trial. If the exceedance rate is too high, the model is missing key risks; if the exceedance rate is too low, the model is not consistent with the organization's risk appetite. To the extent that the conditional variances of not all relevant risk factors move in lock-step to the conditional variance of SPX, multiple scale factors offers the opportunity to be more accurate.

[8] The uniform scale factor has been a part of STANS since it was installed in 2006. *See* Securities Exchange Act Release No. 53322 (February 15, 2006), 71 FR 9403 (February 23, 2006) (SR–OCC–2004–20).

[9] Specifically, OCC maintains both a primary and backup data center that receive live price feeds from multiple price vendors. In the event of service disruption OCC is able to transition to an alternate data center and/or pricing vendor, as applicable.

[10] A fat-tailed distribution is a probability distribution that exhibits large skewness or kurtosis. Compared with a standard normal distribution or bell curve, it has a higher probability of occurrence of extreme events.

[11] OCC defines ''model risk'' as the potential for adverse consequences of incorrect or misused model outputs and reports.

[12] As defined in OCC's Model Risk Management Policy, Model Risk, in the sense of material exposure to the consequences of poor assumptions, is reduced by making models adhere accurately to observed phenomena. In this case, by reducing the role of the uniform scale factor as a proxy between monthly updates of univariate models for risk factors and by allowing certain risk factors to bypass the monthly update process, as described below, OCC believes that this proposed change would reduce model risk.

[13] The dates in parentheticals are the dates from which OCC has historical data on the specified index.

based on the aforementioned methodology.

Consistent with OCC's existing Margin Policy,[14] OCC will evaluate the performance and use of these scale factors and determine if changes to the mapping of products to scale factors or the addition of new scale factors are warranted. Prior to any changes being implemented OCC would present its findings to the Enterprise Risk Management Committee and obtain approval to make the recommended enhancements.

Proposed Anti-Procylical [*sic.*] Measure for Equity-Based Scale Factors

In order to mitigate against pro-cyclicality, OCC intends to apply the relevant scale factor to the greater of (i) the estimated variance of the 1-day return scenarios or (ii) the historical variance of the daily return scenarios of a particular instrument, as a floor. OCC believes this floor would mitigate pro-cyclicality in the relevant return scenarios because it would result in a higher estimate of volatility during periods of relatively lower market volatility than if only the estimated variance in (i) above was used.

Scale Factor for Non-Equity-Based Products

Proposed New Scale Factors for Non-Equity-Based Products

In addition to equity products, OCC has observed a growth in the open interest in other asset classes, most notably the volatility asset class, for which an equity-based scale factor would not be applicable based on negligible correlations observed. To be able to monitor and respond to material changes in the volatility of these asset classes while also mitigating pro-cyclicality, OCC proposes to introduce additional scale factors in STANS related to volatility contracts.

For the volatility asset class, different from equities, volatility characteristics are differentiated based on the term of an instrument. As a result, the implementation of the scale factor will be different from the implementation for the equity asset class. Individual products would be linked within STANS to a particular scale factor not only in accordance with price correlations, but will also consider term structure (*i.e.,* non-equity futures contracts of different maturities).[15]

With regard to the scale factor(s) applicable to implied volatility indexes, the data set would consist of index closing prices for certain volatility indices with a time series that would run from October 1, 2004 (based on available historical data). Applying scale factors to hypothetical returns in this asset class, as is done today for equity-based products, will help ensure that OCC's margin requirements capture shifts in market volatility in these non-equity asset classes, and OCC believes these enhancements would generally promote a more accurate approach to margining within STANS,[16] particularly when markets are volatile.

Proposed Daily Statistical Updates for the Treasury Yield Curve Model

In addition to implementing the scale factors described above, OCC is also proposing to implement processing changes that would update the statistical models for common factors related to Treasury securities on a daily basis. These model changes would allow OCC to monitor and respond to material changes in the volatility of Treasury securities while also mitigating pro-cyclicality without implementing a scale factor specific to Treasury securities. OCC believes that updating its Treasury securities models on a daily basis is a more appropriate way to monitor and respond to material changes in the volatility of Treasury securities while also mitigating pro-cyclicality since the Treasury yield curve model is relatively less complex, with only three factors, and the structure of the Treasuries securities model does not lend itself to a returns-based scale factor (as is used with equity and volatility derivatives, as described above).

Specifically, OCC is proposing to enhance its existing yield curve model that OCC uses to project U.S. Treasury security returns, which is updated monthly. The model contains underlying data set and time series information for Treasury securities, which run from February 4, 2008 (based on available historical data) and, after implementing the proposed enhancements, the model would be updated on a daily basis as new data and time series information becomes available. The proposed enhancements would promote a more accurate approach to margining within STANS, as it relates to Treasury securities, particularly when markets are volatile because the daily statistical updates would prevent the model from becoming stale between monthly updates.

Impact Analysis and Outreach

Based on simulation testing for the period from January 14, 2015, to March 6, 2015, risk margins (*i.e.,* expected shortfall plus the concentration/dependence add-on) would have been 5.2% higher in aggregate as a consequence of these changes. This is mostly due to higher coverage for the Russell 2000 Index and index ETF products under the new methodology. The absolute variation in risk margins relative to production was greater than 5% of Clearing Member capital for about 11% of Clearing Member-days over the simulation period.

In order to inform Clearing Members of the proposed change, OCC provided a general update at a recent OCC Roundtable[17] meeting and would continue to provide updates at Roundtable meetings on a quarterly basis going forward. In addition, OCC would publish an Information Memorandum to all Clearing Members describing the proposed change and will provide additional periodic Information Memoranda updates prior to the implementation date. OCC would also provide at least thirty days prior notice to Clearing Members before implementing the change. Additionally, OCC would perform targeted and direct outreach with Clearing Members that would be most impacted by the proposed change and OCC would work closely with such Clearing Members to coordinate the implementation and associated funding for such Clearing Members resulting from the proposed change.[18] Finally, OCC would discuss the proposed change with its cross-margin clearing house partners to ensure they are aware of the proposed change.[19]

2. *Statutory Basis*

OCC believes that the proposed rule changes are consistent with Section

[14] OCC's Margin Policy describes OCC's approach to prudently managing market and credit exposures presented by its Clearing Members.

[15] OCC would adopt scale factors specific to existing volatility indices, which include volatility indices on the S&P 500 (VIX and VXST), Russell 2000 (RVX), gold (GVZ), oil (OVX), emerging markets (VXEEM), Brazil (VXEWZ), Nasdaq 100 (VXN) and 10-year Treasury Notes (VXTYN).

[16] *See* notes. 4 & 8, *supra.*

[17] The OCC Roundtable was established to bring Clearing Members, exchanges and OCC together to discuss industry and operational issues. It is comprised of representatives of the senior OCC staff, participant exchanges and Clearing Members, representing the diversity of OCC's membership in industry segments, OCC-cleared volume, business type, operational structure and geography.

[18] Specifically, OCC will discuss with those Clearing Members how they plan to satisfy any increase in their margin requirements associated with the proposed change.

[19] Cross-margin accounts are not uniquely affected by the proposed change and would be affected by the proposed change in the same manner as any other type of OCC account.

17A(b)(3)(F) of the Act,[20] because they would assure the safeguarding of securities and funds in the custody and control of OCC by enhancing the current approach for monitoring market conditions and performing adjustments to OCC's margin coverage on both equity and non-equity based derivatives products for which OCC provides clearance and settlement services when current volatility increase beyond historically observed levels. OCC uses the margin it collects from a defaulting Clearing Member to protect other Clearing Members from loss as a result of the defaulting Clearing Member. By more accurately computing Clearing Member margin requirements OCC can assure the safeguarding of securities and funds in its custody and control.

The proposed model changes described above would enhance the manner in which OCC computes margin requirements for Clearing Members. Specifically, the proposed changes to the Uniform Scale Factor for equity-based products to rely only on post-1957 information would reduce model risk and improve the quality of data by avoiding unnecessary assumptions related to the composition of the SPX before its inception. The proposed four new scale factors for equity-based products would more accurately measure the relationship between current and long-run market volatility with proxies that are correlated more closely to certain products within the equity asset class. The proposed introduction of new scale factors for non-equity based products, for both the volatility assets class and the implied volatility indexes will promote a more accurate approach to margining STANS, when markets experience shifts in volatility. The proposed daily statistical updates for the Treasury yield curve model would allow OCC to monitor and response to material changes in the volatility of Treasury securities while also mitigating pro-cyclicality. Taken together, the changes to the uniform scale factor, the addition of new equity-based scale factors, the addition of non-equity based scale factors and introduction of daily statistical updates for the Treasury yield curve model cause STANS to more accurately compute Clearing Member margin requirements to reflect the risk of Clearing Member portfolios thereby reducing the risk that Clearing Member margin assets would be insufficient should OCC need to use such assets to close-out the positions of a defaulted Clearing Member. Further, the proposed rule changes would make it less likely that the default of a Clearing Member would stress the financial resources available to OCC, which include mutualized resource funds deposited by non-defaulting Clearing Members as Clearing Fund.

OCC believes that the proposed rule changes are also consistent with Rule 17Ad–22(b)(2)[21] because they would limit OCC's credit exposures to its participants under normal market conditions and use risk-based models and parameters to set OCC's margin requirements. As described above, the risk-based model and parameter changes to the uniform scale factor, the addition of new equity-based scale factors, the addition of non-equity based scale factors and introduction of daily statistical updates for the Treasury yield curve model cause STANS to more accurately compute Clearing Member margin requirements. By more accurately computing Clearing Member margin requirements, OCC reduces its credit exposure to its Clearing Members.

The proposed rule changes are not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

(B) Clearing Agency's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impact or impose any burden on competition.[22] The proposed rule change would allow OCC to adjust Clearing Member margin requirements when current volatility increases beyond historical levels. While as a result of the proposed rule change Clearing Members may experience daily margin fluctuations of up to ten percent, such fluctuations are equal in amount to fluctuations Clearing Members typically experience as a result of changes in market price, volatility or interest rates. Therefore, OCC believes that the proposed rule change would not unfairly inhibit access to OCC's services or disadvantage or favor any particular user in relationship to another user. In addition, the proposed rule change would be applied uniformly to all Clearing Members in establishing their margin requirements.

For the foregoing reasons, OCC believes that the proposed rule change is in the public interest, would be consistent with the requirements of the Act applicable to clearing agencies, and would not impact or impose a burden on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–OCC–2016–013 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–OCC–2016–013. 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

[20] 15 U.S.C. 78q–1(b)(3)(F).

[21] 17 CFR 240.17Ad–22(b)(2).

[22] 15 U.S.C. 78q–1(b)(3)(I).

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 OCC and on OCC's Web site at *http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_16_013.pdf.*

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–OCC–2016–013 and should be submitted on or before November 28, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated Authority.[23]

Brent J. Fields,

Secretary

[FR Doc. 2016–26791 Filed 11–4–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79216; File No. SR–CHX–2016–16]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Adopt the CHX Liquidity Taking Access Delay

November 1, 2016.

On September 6, 2016, the Chicago Stock Exchange, Inc. (''CHX'') 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 adopt the CHX Liquidity Taking Access Delay. The proposed rule change was published for comment in the **Federal Register** on September 22, 2016.[3] The Commission received thirteen comment letters on the proposed rule change [4] and a response letter from the Exchange.[5]

Section 19(b)(2) of the Act [6] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is November 6, 2016. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and the comment letters. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[7] designates December 21, 2016, as the date by which the Commission shall either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change (File Number SR–CHX–2016–16).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Brent J. Fields,

Secretary.

[FR Doc. 2016–26787 Filed 11–4–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32351; 812–14633]

Prudential ETF Trust, et al.; Notice of Application

November 1, 2016.

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 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c-1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested order would permit (a) index-based series of certain open-end management investment companies (''Funds'') to issue shares redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Fund shares to occur at negotiated market prices rather than at net asset value (''NAV''); (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of shares for redemption; (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of Creation Units; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds (''Funds of Funds'') to acquire shares of the Funds; and (f) certain Funds (''Feeder Funds'') to create and redeem Creation Units in-kind in a master-feeder structure.

APPLICANTS: Prudential ETF Trust (the ''Trust''), a Maryland statutory trust that will be registered under the Act as an open-end management investment company with multiple series, Prudential Investments LLC (the ''Initial Adviser''), a New York limited liability company registered as an investment

[23] 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. 78860 (September 16, 2016), 81 FR 65442.

[4] *See* letters from: Douglas A. Cifu, Chief Executive Officer, Virtu Financial, dated September 21, 2016; R.T. Leuchtkafer, dated September 29, 2016; Adam Nunes, Head of Business Development, Hudson River Trading LLC, dated October 6, 2016; Beste Bidd, Trader, dated October 9, 2016; Joanna Mallers, Secretary, FIA Principal Traders Group, dated October 13, 2016; John L. Thornton, Co-Chair, Hal S. Scott, Director, and R. Glenn Hubbard, Co-Chair, Committee on Capital Markets Regulation, dated October 13, 2016; Adam C. Cooper, Senior Managing Director and Chief Legal Officer, Citadel Securities, dated October 13, 2016; Tyler Gellasch, Executive Director, Healthy Markets Association, dated October 13, 2016; Eric Budish, Professor of Economics, University of Chicago Booth School of Business, dated October 13, 2016; Elizabeth K. King, General Counsel and Corporate Secretary, New York Stock Exchange, dated October 14, 2016; James J. Angel, Associate Professor, McDonough School of Business, Georgetown University, dated October 16, 2016; Eric Swanson, EVP, General Counsel, and Secretary, Bats Global Markets, Inc., dated October 25, 2016; and Eric Pritchett, Chief Executive Officer, Potamus Trading LLC, dated October 26, 2016. All of the comment letters are available at: *https://www.sec.gov/comments/sr-chx-2016-16/chx201616.shtml.*

[5] *See* letter from James Ongena, Executive Vice President and General Counsel, Chicago Stock Exchange, dated October 28, 2016.

[6] 15 U.S.C. 78s(b)(2).

[7] *Id.*

[8] 17 CFR 200.30–3(a)(31).

adviser under the Investment Advisers Act of 1940, and Prudential Investment Management Services LLC, a broker-dealer registered under the Securities Exchange Act of 1934 (''Exchange Act'').

FILING DATES: The application was filed on March 25, 2016, and amended on July 21, 2016.

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 November 29, 2016, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants: Diana N. Huffman, Esq., Prudential Investments LLC, 655 Broad Street, Newark, NJ 07102 and Dianne O'Donnell, Esq., Willkie Farr & Gallagher LLP, 787 7th Avenue, New York, NY 10019.

FOR FURTHER INFORMATION CONTACT: Michael S. Didiuk, Senior Counsel, at (202) 551–8639, or Holly Hunter-Ceci, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Summary of the Application

1. Applicants request an order that would allow Funds to operate as index exchange traded funds (''ETFs'').[1] Fund shares will be purchased and redeemed at their NAV in Creation Units only. All orders to purchase Creation Units and all redemption requests will be placed by or through an ''Authorized Participant'', which will have signed a participant agreement with a broker-dealer registered under the Exchange Act (together with any future distributor, the ''Distributor''). Shares will be listed and traded individually on a national securities exchange, where share prices will be based on the current bid/offer market. Certain Funds may operate as Feeder Funds in a master-feeder structure. Any order granting the requested relief would be subject to the terms and conditions stated in the application.

2. Each Fund will hold investment positions selected to correspond generally to the performance of an Underlying Index. In the case of Self-Indexing Funds, an affiliated person, as defined in section 2(a)(3) of the Act (''Affiliated Person''), or an affiliated person of an Affiliated Person (''Second-Tier Affiliate''), of the Trust or a Fund, of the Adviser, of any sub-adviser to or promoter of a Fund, or of the Distributor will compile, create, sponsor or maintain the Underlying Index.[2]

3. Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified in the application, purchasers will be required to purchase Creation Units by depositing specified instruments (''Deposit Instruments''), and shareholders redeeming their shares will receive specified instruments (''Redemption Instruments''). The Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions) except as specified in the application.

4. Because shares will not be individually redeemable, applicants request an exemption from section 5(a)(1) and section 2(a)(32) of the Act that would permit the Funds to register as open-end management investment companies and issue shares that are redeemable in Creation Units only.

5. Applicants also request an exemption from section 22(d) of the Act and rule 22c–1 under the Act as secondary market trading in shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Applicants state that (a) secondary market trading in shares does not involve a Fund as a party and will not result in dilution of an investment in shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants represent that share market prices will be disciplined by arbitrage opportunities, which should prevent shares from trading at a material discount or premium from NAV.

6. With respect to Funds that effect creations and redemptions of Creation Units in kind and that are based on certain Underlying Indexes that include foreign securities, applicants request relief from the requirement imposed by section 22(e) in order to allow such Funds to pay redemption proceeds within fifteen calendar days following the tender of Creation Units for redemption. Applicants assert that the requested relief would not be inconsistent with the spirit and intent of section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Funds of Funds to acquire Fund shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker or dealer registered under the Exchange Act, to sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are Affiliated Persons, or Second-Tier Affiliates, of the Funds, solely by virtue of certain

[1] Applicants request that the order apply to the Trust's initial index-based ETF series, as well as any additional series of the Trust, and any other open-end management investment company or existing or future series thereof that may be created in the future (each, included in the term ''Fund''), each of which will operate as an ETF and will track a specified index comprised of domestic or foreign equity and/or fixed income securities (each, an ''Underlying Index''). Any Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (each, an ''Adviser'') and (b) comply with the terms and conditions of the application.

[2] Each Self-Indexing Fund will post on its Web site the identities and quantities of the investment positions that will form the basis for the Fund's calculation of its NAV at the end of the day. Applicants believe that requiring Self-Indexing Funds to maintain full portfolio transparency will help address, together with other protections, conflicts of interest with respect to such Funds.

ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions and Deposit Instruments and Redemption Instruments will be valued in the same manner as those investment positions currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[3] The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Applicants also request relief to permit a Feeder Fund to acquire shares of another registered investment company managed by the Adviser having substantially the same investment objectives as the Feeder Fund (''Master Fund'') beyond the limitations in section 12(d)(1)(A) and permit the Master Fund, and any principal underwriter for the Master Fund, to sell shares of the Master Fund to the Feeder Fund beyond the limitations in section 12(d)(1)(B).

10. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Brent J. Fields,

Secretary.

[FR Doc. 2016–26786 Filed 11–4–16; 8:45 am]

BILLING CODE 8011–01–P

[3] The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants, moreover, are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission Office of Investor Education and Advocacy Washington, DC 20549–0213.

Extension:

Rule 17a–6; SEC File No. 270–506, OMB Control No. 3235–0564.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Section 17(a) of the Investment Company Act of 1940 (the ''Act'') generally prohibits affiliated persons of a registered investment company (''fund'') from borrowing money or other property from, or selling or buying securities or other property to or from, the fund or any company that the fund controls.[1] Rule 17a–6 (17 CFR 270.17a–6) permits a fund and a ''portfolio affiliate'' (a company that is an affiliated person of the fund because the fund controls the company, or holds five percent or more of the company's outstanding voting securities) to engage in principal transactions that would otherwise be prohibited under section 17(a) of the Act under certain conditions. A fund may not rely on the exemption in the rule to enter into a principal transaction with a portfolio affiliate if certain prohibited participants (*e.g.,* directors, officers, employees, or investment advisers of the fund) have a financial interest in a party to the transaction. Rule 17a–6 specifies certain interests that are not ''financial interests,'' including any interest that the fund's board of directors (including a majority of the directors who are not interested persons of the fund) finds to be not material. A board making this finding is required to record the basis for the finding in its meeting minutes. This recordkeeping requirement is a collection of information under the Paperwork Reduction Act of 1995 (''PRA'').[2]

The rule is designed to permit transactions between funds and their portfolio affiliates in circumstances in which it is unlikely that the affiliate would be in a position to take advantage of the fund. In determining whether a financial interest is ''material,'' the board of the fund should consider whether the nature and extent of the interest in the transaction is sufficiently small that a reasonable person would not believe that the interest affected the determination of whether to enter into the transaction or arrangement or the terms of the transaction or arrangement. The information collection requirements in rule 17a–6 are intended to ensure that Commission staff can review, in the course of its compliance and examination functions, the basis for a board of director's finding that the financial interest of an otherwise prohibited participant in a party to a transaction with a portfolio affiliate is not material.

Based on staff discussions with fund representatives, we estimate that funds currently do not rely on the exemption from the term ''financial interest'' with respect to any interest that the fund's board of directors (including a majority of the directors who are not interested persons of the fund) finds to be not material. Accordingly, we estimate that annually there will be no principal transactions under rule 17a–6 that will result in a collection of information.

The Commission requests authorization to maintain an inventory of one burden hour to ease future renewals of rule 17a–6's collection of information analysis should funds rely on this exemption to the term ''financial interest'' as defined in rule 17a–6.

The estimate of burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. Complying with this collection of information requirement is necessary to obtain the benefit of relying on rule 17a–6. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

[1] 15 U.S.C. 80a–17(a).

[2] 44 U.S.C. 3501.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: November 1, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–26785 Filed 11–4–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79211; File No. SR–NYSEArca–2016–100]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the Direxion Daily Municipal Bond Taxable Bear 1X Fund Under NYSE Arca Equities Rule 5.2(j)(3)

November 1, 2016.

I. Introduction

On July 13, 2016, 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 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the Direxion Daily Municipal Bond Taxable Bear 1X Fund (''Fund''), a series of the Direxion Shares ETF Trust (''Trust''). The proposed rule change was published for comment in the **Federal Register** on August 3, 2016.[3] On September 14, 2016, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On September 15, 2016, the Exchange filed Amendment No. 1 to the proposed rule change.[6] The Commission received no comments on the proposed rule change. This order institutes proceedings under Section 19(b)(2)(B) of the Act [7] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

II. The Exchange's Description of the Proposal

The Exchange proposes to list and trade the Shares under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02, which governs the listing and trading of Investment Company Units based on fixed income securities indexes. The Fund is a series of the Trust.[8] Rafferty Asset Management, LLC would be the investment adviser to the Fund. Foreside Fund Services, LLC will be the distributor of the Fund's Shares. The Bank of New York Mellon would serve as the accounting agent, custodian, and transfer agent for the Fund. U.S. Bancorp Fund Services, LLC will serve as the Fund's administrator.[9]

The Standard & Poor's National AMT-Free Municipal Bond Index (''Index'') would be the Fund's benchmark.[10] The Index is a broad, comprehensive, market value-weighted index designed to measure the performance of the tax-exempt, investment-grade U.S. municipal bond market. The Fund would seek daily inverse investment results of the Index but would not seek to achieve its stated investment objective over a period of time greater than one day. Further, the Fund might gain inverse exposure to only a representative sample of the securities in the Index that have aggregate characteristics similar to those of the Index. The Fund would gain this inverse exposure by investing in a combination of Financial Instruments (defined below) that provide inverse exposure to the underlying securities of the Index. The Fund would not seek income that is exempt from federal, state, or local income taxes.

A. The Fund's Principal Investments

The Fund would seek to track 100% of the inverse of the daily performance of the Index. Under normal circumstances, the Fund would create net short positions by investing at least 80% of the Fund's assets (plus any borrowings for investment purposes) in the following financial instruments (''Financial Instruments''): Options on exchange-traded funds (''ETFs'') and indices, traded on U.S. exchanges (based on gross notional value); swaps that provide short exposure to the securities included in the Index and various ETFs (based on gross notional value); and short positions in ETFs, as described below in this section, that, in combination, provide inverse exposure to the Index.

The Fund might invest in options that provide short exposure to the Index or various ETFs, including iShares National Muni Bond ETF, SPDR Nuveen Barclays Municipal Bond ETF, iShares Short-term National Muni Bond ETF, SPDR Nuveen Barclays Short-Term Municipal Bond ETF, Market Vectors High-Yield Municipal Index ETF, SPDR Nuveen S&P High Yield Municipal Bond ETF, Market Vectors AMT-Free Intermediate Municipal Index ETF, PowerShares National AMT-Free Municipal Bond Portfolio, Vanguard Tax-Exempt Bond ETF, and the PIMCO Intermediate Municipal Bond Active Exchange-Traded Fund.

The Fund might invest in swaps that provide short exposure to the securities included in the Index and various ETFs, including iShares National Muni Bond ETF, SPDR Nuveen Barclays Municipal Bond ETF, iShares Short-Term National Muni Bond ETF, SPDR Nuveen Barclays Short-Term Municipal Bond ETF, Market Vectors High-Yield Municipal Index ETF, SPDR Nuveen S&P High Yield Municipal Bond ETF, Market Vectors AMT-Free Intermediate Municipal Index ETF, PowerShares

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 78433 (July 28, 2016), 81 FR 51241.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 78840, 81 FR 64552 (September 20, 2016). The Commission designated November 1, 2016, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] In Amendment No. 1, which replaced the original filing in its entirety, the Exchange: (1) Revised the description of the Fund's principal investments and (2) made other technical amendments. Amendment No. 1 is available at *https://www.sec.gov/comments/sr-nysearca-2016-100/nysearca2016100-1.pdf.*

[7] 15 U.S.C. 78s(b)(2)(B).

[8] The Trust is registered under the Investment Company Act of 1940 (''1940 Act''). According to the Exchange, on February 29, 2016, the Trust filed a registration statement on Form N–1A under the Securities Act of 1933 and the 1940 Act (File Nos.: 811–22201 and 333–150525).

[9] Additional information regarding the Trust, the Fund, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings, disclosure policies, calculation of the NAV, distributions, and taxes, among other things, can be found in Amendment No. 1 and the Registration Statement, as applicable. *See* Amendment No. 1, *supra* note 6 and Registration Statement, *supra* note 8.

[10] The S&P Dow Jones Indices is the ''Index Provider'' with respect to the Index. The Index Provider is not a broker-dealer or affiliated with a broker-dealer and has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Index.

National AMT-Free Municipal Bond Portfolio, Vanguard Tax-Exempt Bond ETF, and the PIMCO Intermediate Municipal Bond Active Exchange-Traded Fund.

The Fund might take direct short positions in ETFs, such as the iShares National Muni Bond ETF, SPDR Nuveen Barclays Municipal Bond ETF, iShares Short-term National Muni Bond ETF, SPDR Nuveen Barclays Short-Term Municipal Bond ETF, Market Vectors High-Yield Municipal Index ETF, SPDR Nuveen S&P High Yield Municipal Bond ETF, Market Vectors AMT-Free Intermediate Municipal Index ETF, PowerShares National AMT-Free Municipal Bond Portfolio, Vanguard Tax-Exempt Bond ETF, and the PIMCO Intermediate Municipal Bond Active Exchange-Traded Fund.[11] The Fund would not take long positions in ETFs or invest in options that overlie inverse, leveraged, or inverse leveraged ETFs.

B. The Fund's Non-Principal Investments

According to the Exchange, under normal circumstances, at least 80% of the Fund's assets will be invested in Financial Instruments to establish net short positions, as described above, and the Fund's remaining assets might be invested in cash and the following cash equivalents (in addition to cash or cash equivalents used to collateralize the Fund's investments in Financial Instruments): Money market funds, depository accounts with institutions with high quality credit ratings, U.S. government securities that have terms-to-maturity of less than 397 days, and repurchase agreements that have terms-to-maturity of less than 397 days.

III. Proceedings To Determine Whether To Approve or Disapprove SR–NYSEArca–2016–100 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[12] to determine whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as stated below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[13] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade'' and ''to protect investors and the public interest.'' [14] The Exchange has submitted the proposed rule change because the Shares do not meet all of the ''generic'' listing requirements of Commentary .02(a) to NYSE Arca Equities Rule 5.2(j)(3). Namely, Commentary .02(a)(2) to NYSE Arca Equities Rule 5.2(j)(3) provides that, for an index or portfolio that underlies a series of Investment Company Units, components that in the aggregate account for at least 75% of the weight of such index or portfolio each shall have a minimum original principal amount outstanding of $100 million or more. Although the Index that underlies the Shares does not satisfy this requirement, the Exchange states that the Index is nonetheless sufficiently broad-based to deter potential manipulation because: (1) It is composed of approximately 3,063 issues and 474 unique issuers; (2) a substantial portion (95.87%) of the Index weight is composed of maturities that are part of an entire municipal bond offering with a minimum original principal amount outstanding of $100 million or more; and (3) the total ($248 billion) and the average ($81 million) dollar amount outstanding of Index issues are ''substantial.'' [15]

The Commission seeks comment on whether the Index characteristics the Exchange has identified, as noted above, provide sufficient basis for the Commission to determine that the Index, and thereby the Shares that overlie it, is not susceptible to manipulation. In this regard, the Commission notes that it recently approved a proposal to list and trade shares of an actively managed municipal bond ETF,[16] where the listing exchange made a number of other representations regarding the type of municipal bonds that the fund would hold. For example, the exchange, in that instance, stated that the fund's investments in municipal securities would provide exposure to at least 15 different states, with no more than 30% of the value of the fund's net assets comprising municipal securities that provide exposure to any single state. Further, the exchange also noted that the fund would include securities from a minimum of 13 non-affiliated issuers.[17] Although in this filing, the Fund would seek an inverse investment result of an index rather than actively manage a portfolio of municipal securities, the concerns regarding the susceptibility of the Index underlying the Shares to manipulation is similar to the concerns regarding the susceptibility of a portfolio to manipulation. Accordingly, the Commission seeks comment on whether the Exchange has demonstrated that its proposal is consistent with Section 6(b)(5) of the Act, and specifically whether the price of the Shares is susceptible to manipulation.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any

[11] For purposes of this filing, ETFs are Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600) and also are securities listed on another national securities exchange pursuant to substantially equivalent listing rules. The Fund will not take short positions in inverse, leveraged, or inverse leveraged ETFs.

[12] 15 U.S.C. 78s(b)(2)(B).

[13] *Id.*

[14] 15 U.S.C. 78f(b)(5).

[15] Namely, according to the Exchange, as of May 23, 2016, the total dollar amount outstanding of issues in the Index was approximately $248 billion and the average dollar amount outstanding of issues in the Index was approximately $81 million. Further, as of May 23, 2016, the most heavily weighted component represents 0.43% of the weight of the Index and the five most heavily weighted components represent 1.88% of the weight of the Index.

[16] *See* Securities Exchange Act Release No. 78913 (Sep. 23, 2016), 81 FR 69109 (Oct. 5, 2016) (SR–NASDAQ–2016–002).

[17] For purposes of this restriction, the exchange provided that ''non-affiliated issuers'' are issuers that are not ''affiliated persons'' within the meaning of Section 2(a)(3) of the 1940 Act. Additionally, each state and each separate political subdivision, agency, authority, or instrumentality of such state, each multi-state agency or authority, and each guarantor, if any, would be treated as separate issuers of municipal securities.

request for an opportunity to make an oral presentation.[18]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by November 28, 2016. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by December 12, 2016. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in Amendment No. 1 to the proposed rule change, in addition to any other comments they may wish to submit about the proposed rule change.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2016–100 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Numbers SR–NYSEArca–2016–100. 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 these filings also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2016–100 and should be submitted on or before November 28, 2016. Rebuttal comments should be submitted by December 12, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Brent J. Fields,

Secretary.

[FR Doc. 2016–26790 Filed 11–4–16; 8:45 am]

BILLING CODE 8011–01–P

[18] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Pub. L. 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[19] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79214; File No. SR–NYSEArca–2016–139]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Commentary .05 to Rule 6.91

November 1, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on October 25, 2016, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Commentary .05 to Rule 6.91(Electronic Complex Order Trading) to enhance the price protection filters applicable to electronically entered Complex Orders. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend Commentary .05 to Rule 6.91 to enhance the Exchange's price protection filters applicable to electronically entered Complex Orders,[4] including by clarifying how the functionality operates and expanding its application, as described below.

Clarifying the Description of the Filter

Commentary .05 to Rule 6.91 currently sets forth the Price Protection Filter (the ''Filter'') applicable to each incoming ''Electronic Complex Order'' (or ''ECO'').[5] The Filter automatically rejects incoming ECOs with a price that deviates from the current market by the Specified Amount,[6] which varies depending on the smallest MPV of any leg in the ECO.[7]

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Rule 6.62(e) defines a Complex Order as any order involving the simultaneous purchase and/or sale of two or more different option series in the same underlying security, for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purpose of executing particular investment strategy.

[5] Per Rule 6.91, an ECO is a Complex Order that has been entered into the NYSE Arca System (''System'') and routed to the Complex Matching Engine (''CME'') for possible execution. The CME is the mechanism in which ECOs are executed against each other or against individual quotes and orders in the Consolidated Book. ECOs that are not immediately executed by the CME are ranked in the Consolidated Book. *See* Rule 6.91(a).

[6] The Specified Amount is defined as: (i) .10 for orders where the smallest Minimum Price Variation (''MPV'') of any leg of the Electronic Complex Order is .01; (ii) .15 for orders where the smallest MPV of any leg of the Electronic Complex Order is .05; and .30 for orders where the smallest MPV of any leg of the Electronic Complex Order is .10. *See* Commentary .05 to Rule 6.91.

[7] *See* Commentary .05 to Rule 6.91(a). The Exchange notes that each ECO is entered into the

Continued

First, the Exchange proposes to modify its description of how the Filter operates to make it easier for market participants to understand. Commentary .05 to Rule 6.91 currently describes the Filter as rejecting an ECO if ''the net debit/credit limit price of the order is greater (less) than the derived net debit/credit NBBO for the contra-side of that same strategy by an amount specified by the Exchange ('Specified Amount').'' The Exchange proposes to replace references to the ''derived contra-side net debit/credit NBBO'' with the ''contra-side Complex NBBO,'' as the Exchange has defined Complex NBBO since implementing the Filter.[8] This proposed modification would not affect the operation of the rule. Rather, the Exchange believes this change would reduce redundancy and add internal consistency to Exchange rules. Further, regarding the description of how the Filter operates, the Exchange proposes to provide that the Filter would reject an ECO back to the submitting OTP Holder if the sum of the following would be less than zero ($0.00):

(i) The net debit (credit) limit price of the order,

(ii) the contra-side Complex NBBO for that same Complex Order, and

(iii) the Specified Amount.[9]

The proposed modification does not alter how the Filter is applied. The Filter would continue to help prevent the execution of aggressively-priced ECOs (*i.e.,* priced so far away from the prevailing contra-side NBBO market for the same strategy) that could cause significant price dislocation in the market. The Exchange would continue to apply the Filter to help ensure that market participants do not receive an execution at a price significantly inferior to the contra-side NBBO. However, the proposed modification would add specificity and more clearly convey the operation of the Filter. The Exchange believes this proposed change would add clarity and transparency to the rule text and enable market participants to better understand the operation of the Filter, and the calculation that the Exchange applies to incoming ECOs without altering the operation of the Filter.

Second, the Exchange proposes to modify its explanation of how the Specified Amount may be adjusted based on the characteristics of the ECO. Currently, paragraphs (b)–(d) of Commentary .05 describe how the Filter ''will be applied by'' the Specified Amount, which Specified Amount is multiplied by the component of the leg ratio that the leg of the order represents.[10] The result is that the Specified Amount may change depending on the product of multiplying it by the component of the ECO ratio that the leg of the order represents, although the rule text does not explicitly state this fact.[11] The Exchange proposes to modify the rule text to make clear that the Specified Amount may be adjusted, which, in turn may affect how the Filter ''will be applied.'' As with the proposed modification to the description of how the Filter operates, this modification further clarifies (but does not alter) the operation of the Filter. The Filter would continue to prevent the execution of aggressively-priced ECOs that may cause significant price dislocation in the market. Specifically, the Exchange proposes to add new paragraph (b) to Commentary .05 to provide that ''[t]he Specified Amount may be adjusted based on the ratios and the MPVs of the legs of the [ECO].'' [12] The Exchange then proposes to renumber current paragraphs (b)–(d) of Commentary .05 to be sub-points (i)–(iii) to new paragraph (b) and to clarify in each sub-point how the Specified Amount will be adjusted.[13]

Current paragraph (b) to Commentary .05 provides that for ECOs ''that are entered on a 1x1 ratio, the Price Protection Filter will be applied by the Specified Amount (.10, .15, or .30),'' which, as noted above, means the Filter would be multiplied by the Specified Amount. In ECOs with a 1x1 ratio, the product of this multiplication would always result in .10, .15, or .30. Thus, the Exchange proposes to clarify this paragraph to provide that for ECOs ''that are entered on a 1x1 ratio, the Specified Amount is not adjusted (.10, .15, or .30).'' [14] The Exchange believes this proposed modification makes clear that the Specified Amount remains unadjusted for ECOs entered on a 1x1 ratio, which is consistent with the current rule text, but not explicitly stated.

In addition, current paragraph (c) to Commentary .05 provides that for ECOs ''that are entered on an uneven ratio (2x3 for example) where the MPV on all legs is the same, the Price Protection Filter will be applied by the Specified Amount multiplied by the smallest contract size leg of the ratio (.20, .30, or .60 on a 2x3 for example)''.[15] Rather than state that ''the Filter will be applied by the Specified Amount multiplied by the smallest contract size leg of the ratio,'' the Exchange proposes to clarify how the Specified Amount is adjusted, which is a more straightforward construction that the Exchange believes is easier to comprehend. Specifically, the Exchange proposes to clarify that for ECOs that are entered on an uneven ratio (2x3 for example) where the MPV on all legs is the same, ''the Specified Amount is adjusted by multiplying the component of the ratio represented by the smallest leg of the order by the Specified Amount (*i.e.,* .20 is the adjusted Specified Amount for a 2x3 Electronic Complex Order with an MPV of .01 on both legs because .20 (2 x.10) is less than .30 (3 x.10) for example).'' [16]

Further, current paragraph (d) to Commentary .05 provides that for ECOs ''that are entered on an uneven ratio where the MPV of the legs are not the same (2x3 ratio with a .10 MPV and .05 MPV for example), the Price Protection Filter will be applied by taking the lesser of; the Specified Amount applicable to the smallest size leg of the Electronic Complex Order multiplied by the contract size of that leg (.60 in this example), or the Specified Amount of the largest size leg of the Electronic Complex Order multiplied by the contract size of that leg (.45 in this example).'' [17] Utilizing the same calculation set forth in proposed paragraph (b)(ii) to Commentary .05, the Exchange likewise proposes to clarify

System at a net debit (credit) price for the entire strategy and does not include specified prices for any single series component (''leg'') of the ECO. *See also* Securities and Exchange Act Release No. 70677 (October 11, 2013), 78 FR 62923 (October 22, 2013) (SR–NYSEArca–-2013–103) (Notice of filing, which describes the operation of the Filter) (herein referred to as the ''Original Release'').

[8] *See* 6.1A(11)(b) (defining Complex NBBO as ''the NBBO for a given complex order strategy as derived from the national best bid and national best offer for each individual component series of a Complex Order''). *See also* Securities and Exchange Act Release No. 73267 (September 30, 2014), 79 FR 60223 (October 6, 2014) (SR–NYSEArca–2014–108) (Notice of filing and immediate effectiveness of proposed rule change to codify the term Complex NBBO).

[9] *See* proposed Commentary .05(a) to Rule 6.91. The Exchange also proposes to relocate the word ''be'' in the first sentence of this paragraph to engender the active, as opposed to passive, voice. *See id.* (providing, in part, that ''[a]n incoming [ECO] received during Core Trading Hours will be automatically rejected back to the submitting OTP Holder'').

[10] *See* Commentary .05(b)–(d) to Rule 6.91.

[11] *See id. See also supra* note 7, Original Release 78 FR at 62924 (providing examples of how the Filter operates depending upon the leg ratio of the ECO).

[12] *See* proposed Commentary .05(b) to Rule 6.91.

[13] Consistent with this proposed change, the Exchange also proposes to redesignate paragraphs (e) and (f) of Commentary .05 to be paragraphs (c) and (d), respectively.

[14] *See* proposed Commentary .05(b)(i) to Rule 6.91.

[15] *See* Commentary .05(c) to Rule 6.91.

[16] *See* proposed Commentary .05(b)(ii) to Rule 6.91.

[17] *See* Commentary .05(c) to Rule 6.91.

how the Specified Amount is adjusted for ECOs that are entered on an uneven ratio where the MPV of the legs is not the same (a two-legged order with a 2x3 ratio where the first leg has a .10 MPV and the second leg has a .05 MPV for example). As proposed, ''the Specified Amount is equal to the smallest amount calculated by multiplying, for each leg of the order, the Specified Amount for the leg of the order by the component of the ratio represented by that leg of the order (*i.e.,* .45 is the adjusted Specified Amount in this example because .45 (3 x .15) is less than .60 (2 x.30).'' [18]

The Exchange believes that proposed paragraph (b) and sub-paragraphs (i)–(iii) clarify that the Specified Amount is adjusted based on the characteristics of the ECO, which is consistent with the current rule text but not stated explicitly. The Exchange believes this change, in turn, further clarifies (but does not alter) the operation of the Filter making it easier for market participants to understand.

To illustrate that the proposed modifications do not alter the operation of the Filter, the Exchange has applied the description of the Filter to the examples that the Exchange relied upon when the [sic] it introduced the Filter in 2013.[19]

Example #1: Proposed Rule 6.91(a),(b)

Jan 20 calls—NBBO 2.00–2.10
Jan 25 calls—NBBO 1.05–1.20

The Exchange receives an incoming ECO to buy Jan 20 calls and sell Jan 25 calls on a 1x1 ratio, with a net debit price of 1.25. All legs have an MPV of .05. In this case the contra-side Complex NBBO is offered at a net credit of 1.05 (this price is established by selling one Jan 20 for 2.10 and buying one Jan 25 for 1.05).

The ECO would be automatically rejected if the sum of the following is less than zero ($0.00):

(i) The net debit limit price of the order, in this case −1.25;

(ii) the contra-side Complex NBBO for that same Complex Order, in this case a net credit of 1.05;

(iii) and Specified Amount, in this case .15, as all legs have an MPV of .05.

The Filter would reject the ECO in this example back to the entering ATP holder because the sum is less than zero (−1.25 + 1.05 + .15 = −.05).[20]

Example #2: Proposed Rule 6.91(a),(b)(i)

Jan 20 calls—NBBO 5.00–5.30
Jan 25 calls—NBBO 2.10–2.20

The Exchange receives an incoming ECO to buy Jan 20 calls and sell Jan 25 calls on a 1x1 ratio, with a net debit price of 3.60. The leg markets have different MPVs − .05. and .10. In this case, the contra-side Complex NBBO is offered at a net credit of 3.20 (this price is established by selling one Jan 20 for 5.30 and buying one Jan 25 for 2.10).

The ECO would be automatically rejected if the sum of the following is less than zero ($0.00):

(i) The net debit limit price of the order, in this case −3.60;

(ii) the contra-side Complex NBBO for that same Complex Order, in this case a net credit of 3.20;

(iii) and Specified Amount, in this case .15 (*i.e.,* because the smallest MPV of any leg of the 1x1 ECO is .05; the other leg of the ECO has a larger MPV of .10).

The Exchange notes that, in this example, where the ECO is on a 1x1 ratio and the first leg has a .05 MPV and the second leg has a .10 MPV, the Specified Amount would be determined by the smallest MPV of any leg of the ECO. Thus, because the smallest MPV of this ECO is .05, the Specified Amount is .15 (as opposed to a Specified Amount of .30, which would be the Specified Amount if the smallest MPV of any leg of an ECO is .10). The Filter would reject the ECO in this example back to the entering ATP holder because the sum is less than zero (−3.60 + 3.20 + .15 = −.25).[21]

Example #3: Proposed Rule 6.91(a),(b)(i)

Jan 20 calls—NBBO 2.03–2.08
Jan 25 calls—NBBO 1.00–1.01

The Exchange receives an incoming Electronic Complex Order to sell Jan 20 calls and buy Jan 25 calls on a 1 x 1 ratio, with a net credit price of .90. All legs have the same MPV of .01: In this case the contra-side Complex NBBO market is priced at a net debit of 1.02 (this price is established by buying one Jan 20 for 2.03 and selling one Jan 25 for 1.01).

The ECO would be automatically rejected if the sum of the following is less than zero ($0.00):

(i) The net credit limit price of the order, in this case .90;

(ii) the contra-side Complex NBBO for that same Complex Order, in this case a net debit of −1.02;

(iii) and Specified Amount, in this case .10, because all legs have an MPV of .01.

The Filter would reject the ECO in this example back to the entering ATP holder because the sum is less than zero (.90 + (−1.02) + .10= −.02).[22]

Example #4: Proposed Rule 6.91(a),(b)(ii)

Jan 20 calls—NBBO 2.03–2.08
Jan 25 calls—NBBO 1.00–1.02

The Exchange receives an incoming ECO to sell Jan 20 calls and buy Jan 25 calls, on a 2 x 3 ratio, with a net credit price of .75. All legs have the same MPV of .01. In this case the contra-side Complex NBBO market is priced at a net debit of 1.00 (this price is established by buying two Jan 20s for 2.03 each and selling three Jan 25s for 1.02 each (4.06 − 3.06 = 1.00)).

The ECO would be automatically rejected if the sum of the following is less than zero ($0.00):

(i) The net credit limit price of the order, in this case .75;

(ii) the contra-side Complex NBBO for that same Complex Order, in this case a net debit of −1.00;

(iii) and Specified Amount, in this case .20 (*i.e.,* .10 (as the MPV of both legs is .01) × 2 (the component of the ratio represented by the smallest leg of the order) = .20).

The Exchange notes that, in this example, where the ECO is on a 2×3 ratio and the MPVs on all legs is the same, the Specified Amount is adjusted by multiplying the component of the ratio represented by the smallest leg of the order by the Specified Amount (*i.e.,* .20 in this example where the MPV on both legs is .01 because .20 (2 × .10) is less than .30 (3 × .10).

The Filter would reject the ECO in this example back to the entering ATP holder because the sum is less than zero (.75 + (−1.00) + .20 = −.05).[23]

Example #5: Proposed Rule 6.91(a),(b)(iii)

Jan 20 calls—NBBO 4.10–4.20
Jan 25 calls—NBBO 1.90–2.00

The Exchange receives an incoming ECO to sell Jan 20 calls and buy Jan 25

[18] *See* proposed paragraph (b)(iii) of Commentary .05 to Rule 6.91.

[19] *See supra* note 7, Original Release, 78 FR at 62924–25 (setting froth [sic] five examples to illustrate the operation of the Filter).

[20] Per the Original Release, the ECO in this example was rejected by the Filter because the ''contra-side [Complex] NBBO of 1.05 is better than the limit price of the [ECO] by .20, which exceeds the Filter setting of .15.'' *See supra,* note 7, Original Release, 78 FR at 62923.

[21] Per the Original Release, the ECO in this example was rejected by the Filter because the ''contra-side [Complex] NBBO of 1.05 is better than the limit price of the [ECO] by .40, which exceeds the Filter setting of .15.'' *See supra,* note 7, Original Release, 78 FR at 62923.

[22] Per the Original Release, the ECO in this example was rejected by the Filter because the ''contra-side [Complex] NBBO of 1.02 is better than the limit price of the [ECO] by .12, which exceeds the Filter setting of .10.'' *See supra,* note 7, Original Release, 78 FR at 62923.

[23] Per the Original Release, the ECO in this example was rejected by the Filter because the ''contra-side [Complex] NBBO of 1.00 is better than the limit price of the [ECO] by .25, which exceeds the Filter setting of .20.'' *See supra,* note 7, Original Release, 78 FR at 62923.

calls, on a 2 x 3 ratio, with a net credit price of 1.50. The leg markets have different MPVs—.05. and .10, respectively. In this case the contra-side Complex NBBO market is priced at a net debit of 2.20 (this price is established by buying two Jan 20s for 4.10 each and selling three Jan 25s for 2.00 each (8.20 − 6.00 = 2.20)).

The ECO would be automatically rejected if the sum of the following is less than zero ($0.00):

(i) The net credit limit price of the order, in this case 1.50;

(ii) the contra-side Complex NBBO for that same Complex Order, in this case a net debit of −2.20;

(iii) and Specified Amount, in this case .45 (*i.e.,*.45 is equal to the smallest amount calculated by multiplying, for each leg of the order, the Specified Amount for the leg of the order by the component of the ratio represented by that leg of the order, which yields either .60 (2 × .30 = .60) or .45 (3 × .15 = .45)).

The Exchange notes that, in this example, where the ECO is on a 2 x 3 ratio and the MPV of the legs is not the same, the Specified Amount is equal to the smallest amount calculated by multiplying, for each leg of the order, the Specified Amount for the leg of the order by the component of the ratio represented by that leg of the order (*i.e.,* .45 is the adjusted Specified Amount in this example because .45 (3 × .15) is less than .60 (2 × .30).

The Filer would reject this order back to the entering ATP holder because the sum is less than zero (1.50 + (−2.20 + .45 = −.25).[24]

Example #6: Proposed 6.91(a), (b)[25]

Jan 20 calls—NBBO 2.00–2.10
Jan 25 calls—NBBO 1.05–1.20

The Exchange receives an incoming ECO to buy Jan 20 calls and sell Jan 25 calls on a 1 x 1 ratio, with a net debit price of 1.19. All legs have an MPV of .05. In this case the contra-side Complex NBBO is offered at a net credit of 1.05 (this price is established by selling one Jan 20 for 2.10 and buying one Jan 25 for 1.05).

The ECO would be automatically rejected if the sum of the following is less than zero ($0.00):

(i) The net debit limit price of the order, in this case −1.19;

(ii) the contra-side Complex NBBO for that same Complex Order, in this case a net credit of 1.05;

(iii) and Specified Amount, in this case .15, as all legs have an MPV of .05.

The Filter would not reject the ECO in this example because the sum is zero or greater (−1.19 + 1.05 + .15 = .01).[26] The ECO would be sent to the CME for processing and potential execution.[27]

Extending the Operation of the Filter

The Exchange also proposes to modify paragraph (a) of Commentary .05 to Rule 6.91 to expand the application of the Filter to ECOs received prior to the opening of trading or during a trading halt. The current Filter is applied only to those ECOs entered during Core Trading Hours.[28] As proposed, for each ECO received pre-open or during a trading halt, the Exchange would apply the Filter at the time all the individual component option series open or reopen, provided there is an NBBO market disseminated by OPRA for all individual component option series of the ECO. In this regard, the Exchange proposes to modify paragraph (e) of Commentary .05 of the Rule to remove reference to ''incoming'' and ''at the time the order is received by the Exchange,'' to signify that the Filter is being applied to ECOs received outside of Core Trading Hours.[29] Further, because ECOs received pre-open or during a halt cannot immediately execute, these ECOs would be placed in the Consolidated Book until the series opens or resumes trading, at which time the Filter would be applied before the ECO is eligible to trade.[30] Any ECOs that deviate from the current market by too great an amount, as set forth in the rule, would be canceled, as opposed to being immediately rejected upon receipt (as are ECOs received during Core Trading Hours).[31] The reason such ECOs would be cancelled (and not rejected) is because the CME would accept these orders and, once accepted but not immediately executed, they would be placed on the Consolidated Book until the individual component option series open or reopen.[32] The CME would not reject an ECO that it had previously accepted, and therefore such ECOs would be cancelled instead. The order sender would be notified of the cancellation. The proposed enhancement to the Filter is designed to provide the same level of protection to market participants who enter ECOs before the open or during a trading halt as is currently provided to ECOs received during Core Trading Hours. As proposed, the enhanced Filter would further assist the Exchange in preventing the execution of ECOs priced so far away from the prevailing contra-side NBBO market for the same strategy that the execution of such order could cause significant price dislocation in the market.

Additional Conforming Changes

Finally, the Exchange proposes to make several conforming changes to Rule 6.91 (a)(2)(i)(B) (Execution of Complex Orders at the Open), which are consistent with the proposal to incorporate the defined term Complex NBBO in proposed Commentary .05(a). First, the Exchange proposes to delete as duplicative the definition of the Complex NBBO that appears in Rule 6.91 (a)(2)(i)(B), as the term is now a defined in Rule 6.1A(11)(b).[33] The Exchange also proposes to delete as extraneous the word ''derived,'' which precedes references to ''Complex NBBO.''[34] The Exchange notes that Rule 6.91(a)(2)(i)(B) was updated to include the concept of the Complex NBBO before the Exchange codified this definition and the proposed changes would therefore streamline the rule text and remove redundancy from Exchange rules.[35]

[24] Per the Original Release, the ECO in this example was rejected by the Filter because the ''contra-side [Complex] NBBO of 2.20 is better than the limit price of the [ECO] by .70, which exceeds the Filter setting of .45.'' *See supra,* note 7, Original Release, 78 FR at 62924.

[25] The Exchange notes that Example #6 is new to this filing and was not included in the Original Release, as the Original Release did not include an example of an ECO that was not rejected by the Filter.

[26] Per the Original Release, the ECO in this example was rejected by the Filter because the ''contra-side [Complex] NBBO of 1.05 is better than the limit price of the [ECO] by .20, which exceeds the Filter setting of .15.'' *See supra,* note 7, Original Release, 78 FR at 62923.

[27] *See supra,* note 5 (citing Rule 980NY(a) regarding processing of incoming ECOs).

[28] Rule 6.1A (a)(3) defines Core Trading Hours as the regular trading hours for business set forth in the rules of the primary markets underlying those option classes listed on the Exchange. An order received prior to the opening of trading would be outside of Core Trading Hours. Rule 6.65 describes halts and suspensions of trading, which may occur during Core Trading Hours.

[29] *See* also proposed Commentary .05(e) to Rule 6.91. For internal consistency, the Exchange also proposes to refer to ''individual component option series'' in the proposed paragraph. *See id.*

[30] *See, e.g.,* Rule 6.91(a) (''[ECOs] that are not immediately executed by the CME are routed to the Consolidated Book'').

[31] *See* proposed Commentary .05(a) to Rule 6.91.

[32] *See supra* note 30.

[33] Specifically, the Exchange proposes to delete the following text from Rule 6.91(c)(2)(i)(B)[sic]: ''The derived Complex NBBO is calculated by using best prices for the individual leg markets comprising the Electronic Complex Order as disseminated by OPRA that when aggregated create a derived Complex NBBO for that same strategy The Exchange believes these changes would add clarity, transparency and internal consistency to Exchange rules.''

[34] *See* proposed Rule 6.91(a)(2)(i)(B).

[35] *See* Securities and Exchange Act Release No. 72085 (May 2, 2014) 79 FR 26482 (May 8, 2014) (SR–NYSEArca–2014–53) (Notice of filing and immediate effectiveness of proposed rule change to adopt rules governing an opening auction process for ECOs, including reference to the ''Complex NBBO'').

Implementation

The Exchange will announce by Trader Update the implementation date of the proposed rule change to expand the application of the Filter to ECOs received prior to the opening of trading or during a trading halt.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[36] in general, and furthers the objectives of Section 6(b)(5) of the Act,[37] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that this proposed rule change would allow the Filter to continue to assist with the maintenance of fair and orderly market by helping to mitigate the risks associated with the execution of ECOs priced away from the current market by the Specified Amount, which protects investors from receiving potentially erroneous executions. In addition, the proposed modifications would add specificity and more clearly convey the operation of the Filter, which added clarity and transparency would enable market participants to better understand the operation of the Filter. Specifically, the proposal to modify existing rule text to more clearly state how the Filter is applied and to consistently incorporate the defined term ''Complex NBBO'' would remove impediments to and perfect the mechanism of a free and open market and protect investors and the public interest because such changes would reduce redundancy and add clarity, transparency and internal consistency to Exchange rules.

Further, the Exchange believes the proposal to make explicit that the Specified Amount is adjusted based on the characteristics of the ECO, which is consistent with the current rule text, would further clarify (without altering) the operation of the Filter making it easier for market participants to understand, which would protect investors and the public interest.

The proposal to extend the application of the Filter beyond ECOs entered during Core Trading Hours is designed to help maintain a fair and orderly market by providing market participants entering ECOs with additional protection from anomalous executions. Because the proposed Filter would apply to all ECOs, not just those entered during Core Trading Hours (absent a trading halt), the proposal would enhance the protection offered by the Filter and aid in mitigating the potential risks associated with the execution of any ECOs that are priced a Specified Amount away from the prevailing contra-side market. The proposed rule change would therefore remove impediments to and perfect the mechanism of a free and open market and national market system by ensuring that an existing price protection would be applicable to all ECOs, regardless of when they are entered.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange is proposing to enhance an existing price protection Filter to provide greater protections from potentially erroneous executions and potentially reduce the attendant risks of such executions to market participants. Therefore, the Exchange believes that the proposal should provide an incentive for market participants to enter executable interest in the CME that can help foster price discovery and transparency thereby benefiting all market participants. The proposal is structured to offer the same enhancement to all market participants, regardless of account type, and will not impose a competitive burden on any participant.

The Exchange does not believe that the proposed enhancement would impose a burden on competing options exchanges. Rather, the availability of this enhanced Filter may foster more competition. Specifically, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. When an exchange offers enhanced functionality that distinguishes it from the competition and participants find it useful, it has been the Exchange's experience that competing exchanges will move to adopt similar functionality. Thus, the Exchange believes that this type of competition amongst exchanges is beneficial to the market place as a whole as it can result in enhanced processes, functionality, and technologies.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[38] and Rule 19b–4(f)(6) thereunder.[39] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[40] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[41] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange believes that waiver of the operative delay would be consistent with the protection of investors and the public interest because it would enable the Exchange to enhance an existing price protection Filter. Although the Exchange would cancel, as opposed to reject, an ECO received pre-open or during a halt that was deemed too aggressively priced by the Filter, the Exchange does not believe this operational distinction would prevent waiver of the operative delay. Rather, the Exchange believes that the proposed change would allow for the expansion of the Filter so that it would

[36] 15 U.S.C. 78f(b).

[37] 15 U.S.C. 78f(b)(5).

[38] 15 U.S.C. 78s(b)(3)(A).

[39] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[40] 17 CFR 240.19b–4(f)(6).

[41] 17 CFR 240.19b–4(f)(6)(iii).

apply to ECOs submitted prior to the open of trading or during a trading halt when the individual component option series open or reopen. Thus, the Exchange believes that waiver of the operative delay would protect investors by enabling the Exchange to provide greater protections from potentially erroneous executions and potentially reduce the attendant risks of such executions to market participants. In addition, the Exchange could implement, without delay, the proposed clarifications to add transparency regarding how the Filter operates, including how the Specified Amount may be adjusted based on the characteristics of the ECO.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that the proposal will extend the existing price protection Filter, which currently applies only to ECOs received during Core Trading Hours, to ECOs received during the pre-open or during a trading halt. As noted above, the Filter is designed to protect investors from receiving anomalous or potentially erroneous executions. The proposal also provides for consistent use of defined terms in the Exchange's rules and clarifies the operation of the Filter, including the calculation of the Specified Amount, without altering the operation of the Filter. Accordingly, the Commission finds that waiving the 30-day operative delay is consistent with investors and the public interest and designates the proposal operative upon filing.[42]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[43] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[42] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[43] 15 U.S.C. 78s(b)(2)(B).

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2016–139 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2016–139. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2016–139 and should be submitted on or before November 28, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[44]

Brent J. Fields,

Secretary.

[FR Doc. 2016–26796 Filed 11–4–16; 8:45 am]

BILLING CODE 8011–01–P

[44] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79215; File No. SR–FINRA–2016–039]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Amend Rule 4512 (Customer Account Information) and Adopt FINRA Rule 2165 (Financial Exploitation of Specified Adults)

November 1, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 19, 2016, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC,'' or the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to: (1) Amend FINRA Rule 4512 (Customer Account Information) to require members to make reasonable efforts to obtain the name of and contact information for a trusted contact person for a customer's account; and (2) adopt new FINRA Rule 2165 (Financial Exploitation of Specified Adults) to permit members to place temporary holds on disbursements of funds or securities from the accounts of specified customers where there is a reasonable belief of financial exploitation of these customers.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

With the aging of the U.S. population, financial exploitation of seniors and other vulnerable adults is a serious and growing problem.[3] FINRA's experience with the FINRA Securities Helpline for Seniors® (''Seniors Helpline'') has highlighted issues relating to financial exploitation of seniors and other vulnerable adults.[4] A number of reports and studies also have explored various aspects of this important topic.[5] Moreover, studies indicate that financial exploitation is the most common form of elder abuse.[6] Financial exploitation can be difficult for any investor, but it can be particularly devastating for seniors and other vulnerable adults, many of whom are living on fixed incomes without the ability to offset significant losses over time or through other means.[7] Financial exploitation can occur suddenly, and once funds leave an account they can be difficult, if not impossible, to recover, especially when they ultimately are transferred outside of the U.S.[8] Members need more effective tools that will allow them to quickly and effectively address suspected financial exploitation of seniors and other vulnerable adults. Currently, however, FINRA rules do not explicitly permit members to contact a non-account holder or to place a temporary hold on disbursements of funds or securities where there is a reasonable belief of financial exploitation of a senior or other vulnerable adult.

To address these issues, the proposed rule change would provide members with a way to quickly respond to situations in which they have a reasonable basis to believe that financial exploitation of vulnerable adults has occurred or will be attempted. FINRA believes that a member can better protect its customers from financial exploitation if the member can: (1) Place a temporary hold on a disbursement of funds or securities from a customer's account; and (2) notify a customer's trusted contact person when there is concern that, among other things, the customer may be the victim of financial exploitation. These measures will assist members in thwarting financial exploitation of seniors and other vulnerable adults before potentially ruinous losses occur. As discussed below, FINRA is proposing a number of safeguards to help ensure that there is not a misapplication of the proposed rule and that customers' ordinary disbursements are not disrupted.

A small number of states have enacted statutes that permit financial institutions, including broker-dealers, to place temporary holds on ''disbursements'' or ''transactions'' if financial exploitation of covered persons is suspected.[9] In addition, the North American Securities Administrators Association (''NASAA'') created a model state act to protect vulnerable adults from financial exploitation (''NASAA model''). Due to the small number of state statutes currently in effect and the lack of a federal standard in this area, FINRA believes that the proposed rule change would aid in the creation of a uniform national standard for the benefit of members and their customers.

Trusted Contact Person

The proposed rule change would amend Rule 4512 to require members to make reasonable efforts to obtain the name of and contact information for a trusted contact person upon the opening of a non-institutional customer's account.[10] The proposed rule change would require that the trusted contact person be age 18 or older.[11] While the proposed rule change does not specify what contact information should be obtained for a trusted contact person, a mailing address, telephone number and email address for the trusted contact person may be the most useful information for members.

The proposal does not prohibit members from opening and maintaining an account if a customer fails to identify a trusted contact person as long as the member made reasonable efforts to obtain a name and contact information.[12] FINRA believes that asking a customer to provide the name and contact information for a trusted contact person ordinarily would constitute reasonable efforts to obtain the information and would satisfy the proposed rule change's requirements.

Consistent with the current requirements of Rule 4512, a member would not need to attempt to obtain the name of and contact information for a trusted contact person for accounts in existence prior to the effective date of the proposed rule change (''existing accounts'') until such time as the member updates the information for the account either in the course of the member's routine and customary business or as otherwise required by applicable laws or rules.[13] With respect to any account subject to the requirements of Exchange Act Rule 17a–3(a)(17) to periodically update customer records, a member shall make reasonable efforts to obtain or, if previously obtained, to update where appropriate the name of and contact information for a trusted contact person consistent with the requirements in Exchange Act Rule 17a–3(a)(17).[14] With

[3] *See* The MetLife Study of Elder Financial Abuse: Crimes of Occasion, Desperation, and Predation Against America's Elders (June 2011) (discussing the increasing prevalence of elder financial abuse) (hereinafter ''MetLife Study''). *See also* FINRA Investor Education Foundation, Financial Fraud and Fraud Susceptibility in the United States: Research Report from a 2012 National Survey (2013) (which found that U.S. adults age 65 and older are more likely to be targeted for financial fraud, including investment scams, and more likely to lose money once targeted) (hereinafter ''FINRA Foundation Study'').

[4] *See* FINRA Launches Toll-Free FINRA Securities Helpline for Seniors (April 20, 2015). *See also* Report on the FINRA Securities Helpline for Seniors (December 2015) (stating that from its launch on April 20, 2015 until December 2015, the Seniors Helpline received more than 2,500 calls with an average call duration of nearly 25 minutes) (hereinafter ''Seniors Helpline Report'').

[5] *See, e.g.,* National Senior Investor Initiative: A Coordinated Series of Examinations, SEC's Office of Compliance Inspections and Examinations and FINRA (April 15, 2015) (hereinafter ''Senior Investor Initiative''); MetLife Study; and Seniors Helpline Report.

[6] *See* Interagency Guidance on Privacy Laws and Reporting Financial Abuse of Older Adults, Board of Governors of the Federal Reserve System, Commodity Futures Trading Commission, Consumer Financial Protection Bureau, Federal Deposit Insurance Corp., Federal Trade Commission, National Credit Union Administration, Office of the Comptroller of the Currency and SEC (September 24, 2013) (hereinafter ''Interagency Guidance'') (citing Acierno, R., M.A. Hernandez, A.B. Amstadter, H.S. Resnick, K. Steve, W. Muzzy, and D.G. Kilpatrick, ''Prevalence and Correlates of Emotional, Physical, Sexual and Financial Abuse and Potential Neglect in the United States: The National Elder Mistreatment Study,'' American Journal of Public Health 100(2): 292–97; Lifespan of Greater Rochester, Inc., et al., Under the Radar: New York State Elder Abuse Prevention Study, (Rochester, NY: Lifespan of Greater Rochester, Inc., May 2011)) (hereinafter ''New York State Elder Abuse Prevention Study'').

[7] *See* Seniors Helpline Report.

[8] *See* Seniors Helpline Report.

[9] *See, e.g.,* DEL. CODE ANN. tit. 31, § 3910 (2015); MO. REV. STAT. §§ 409.600-.630 (2015); WASH. REV. CODE §§ 74.34.215, 220 (2015); and IND. CODE ANN. § 23–19–4.1 (2016).

[10] *See* proposed Rule 4512(a)(1)(F).

[11] *See* proposed Rule 4512(a)(1)(F).

[12] *See* proposed Supplementary Material .06(b) to Rule 4512.

[13] *See* Rule 4512(b).

[14] *See* proposed Supplementary Material .06(c) to Rule 4512. The reference to the requirements of Rule 17a–3(a)(17) includes the requirements of Rule 17a–3(a)(17)(i)(A) in conjunction with Rule 17a–3(a)(17)(i)(D). In this regard, Rule 17a–3(a)(17)(i)(D) provides that the account record requirements in Rule 17a–3(a)(17)(i)(A) only apply to accounts for which the member, broker or dealer is, or has within the past 36 months been, required to make a suitability determination under the federal securities laws or under the requirements of a self-regulatory organization of which it is a member.

regard to updating the contact information once provided for other accounts that are not subject to the requirements in Exchange Act Rule 17a–3, a member should consider asking the customer to review and update the name of and contact information for a trusted contact person on a periodic basis or when there is a reason to believe that there has been a change in the customer's situation.[15]

The proposed rule change would also require that, at the time of account opening, a member shall disclose in writing (which may be electronic) to the customer that the member or an associated person is authorized to contact the trusted contact person and disclose information about the customer's account to address possible financial exploitation, to confirm the specifics of the customer's current contact information, health status, or the identity of any legal guardian, executor, trustee or holder of a power of attorney, or as otherwise permitted by proposed Rule 2165. With respect to any account that was opened pursuant to a prior FINRA rule, a member shall provide this disclosure in writing, which may be electronic, when updating the information for the account pursuant to Rule 4512(b) either in the course of the member's routine and customary business or as otherwise required by applicable laws or rules.[16]

FINRA believes that members and customers will benefit from the trusted contact information in many different settings. For example, consistent with the disclosure, if a member has been unable to contact a customer after multiple attempts, a member could contact a trusted contact person to inquire about the customer's current contact information. Or if a customer is known to be ill or infirm and the member has been unable to contact the customer after multiple attempts, the member could contact a trusted contact person to inquire about the customer's health status. A member also could reach out to a trusted contact person if it suspects that the customer may be suffering from Alzheimer's disease, dementia or other forms of diminished capacity. A member could contact a trusted contact person to address possible financial exploitation of the customer before placing a temporary hold on a disbursement. In addition, as discussed below, pursuant to proposed Rule 2165, when information about a trusted contact person is available, a member must notify the trusted contact person orally or in writing, which may be electronic, if the member has placed a temporary hold on a disbursement of funds or securities from a customer's account, unless the member reasonably believes that the trusted contact person is engaged in the financial exploitation.[17]

The trusted contact person is intended to be a resource for the member in administering the customer's account, protecting assets and responding to possible financial exploitation. A member may use its discretion in relying on any information provided by the trusted contact person. A member may elect to notify an individual that he or she was named as a trusted contact person; however, the proposed rule change would *not* require such notification.

Temporary Hold on Disbursement of Funds or Securities

The proposed rule change would permit a member that reasonably believes that financial exploitation may be occurring to place a temporary hold on the disbursement of funds or securities from the account of a ''specified adult'' customer.[18] The proposed rule change creates no obligation to withhold a disbursement of funds or securities where financial exploitation may be occurring. In this regard, Supplementary Material to proposed Rule 2165 would explicitly state that the Rule provides members with a safe harbor from FINRA Rules 2010 (Standards of Commercial Honor and Principles of Trade), 2150 (Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts) and 11870 (Customer Account Transfer Contracts) when members exercise discretion in placing temporary holds on disbursements of funds or securities from the accounts of specified adults under the circumstances denoted in the Rule.[19] The proposed Supplementary Material would further state that the Rule does not require members to place temporary holds on disbursements of funds or securities from the account of a specified adult.[20]

FINRA believes that ''specified adults'' may be particularly susceptible to financial exploitation.[21] Proposed Rule 2165 would define ''specified adult'' as: (A) A natural person age 65 and older;[22] or (B) a natural person age 18 and older who the member reasonably believes has a mental or physical impairment that renders the individual unable to protect his or her own interests.[23] Supplementary Material to proposed Rule 2165 would provide that a member's reasonable belief that a natural person age 18 and older has a mental or physical impairment that renders the individual unable to protect his or her own interests may be based on the facts and circumstances observed in the member's business relationship with the person.[24]

[15] A customer's request to change his or her trusted contact person may be a possible red flag of financial exploitation. For example, a senior customer instructing his registered representative to change his trusted contact person from an immediate family member to a previously unknown third party may be a red flag of financial exploitation.

[16] *See* proposed Supplementary Material .06(a) to Rule 4512. A member would be required to provide the disclosure at account opening or when updating information for existing accounts pursuant to Rule 4512(b), even if a customer fails to identify a trusted contact person. Among other things, such disclosure may assist a customer in making an informed decision about whether to provide the trusted contact person information.

[17] *See* proposed Rule 2165(b)(1)(B)(ii). With respect to disclosing information to the trusted contact person, Regulation S–P excepts from the Regulation's notice and opt-out requirements disclosures made: (A) To comply with federal, state, or local laws, rules and other applicable legal requirements; or (B) made with client consent, provided such consent has not been revoked. *See* 17 C.F.R §§ 248.15(a)(1) and (a)(7)(i). FINRA believes that disclosures to a trusted contact person pursuant to proposed Rule 2165 or 4512(a)(1)(F) would be consistent with Regulation S–P.

[18] *See* proposed Rule 2165(b)(1). Members also must consider any obligations under FINRA Rule 3310 (Anti-Money Laundering Compliance Program) and the reporting of suspicious transactions required under 31 U.S.C. 5318(g) and the implementing regulations thereunder.

[19] *See* proposed Supplementary Material .01 to Rule 2165.

[20] *See* proposed Supplementary Material .01 to Rule 2165. FINRA understands that some members, pursuant to state law or their own policies, may already place temporary holds on disbursements from customers' accounts where financial exploitation is suspected.

[21] *See* Senior Investor Initiative (noting the increase in persons aged 65 and older living in the United States and the concentration of wealth in those persons during a time of downward yield pressure on conservative income-producing investments). *See also* FINRA Foundation Study (noting that respondents age 65 and over were more likely to be solicited to invest in a potentially fraudulent opportunity (93%), more likely to engage with the offer (49%) and more likely to have lost money (16%) than younger respondents); MetLife Study (noting the many forms of vulnerability that ''make elders more susceptible to [financial] abuse,'' including, among others, poor physical or mental health, lack of mobility, and isolation); Protecting Elderly Investors from Financial Exploitation: Questions to Consider (February 5, 2015) (noting that one of the greatest risk factors for diminished capacity is age).

[22] *See, e.g.,* Aging Statistics, U.S. Department of Health and Human Services Administration on Aging (referring to the ''older population'' as persons ''65 years or older''); Senior Investor Initiative (noting the examinations underlying the report ''focused on investors aged 65 years old or older'').

[23] *See* proposed Rule 2165(a)(1).

[24] *See* proposed Supplementary Material .03 to Rule 2165. A member also may rely on other sources of information in making a determination under proposed Rule 2165(a)(1) (*e.g.,* a court or government agency order finding a customer to be legally incompetent).

The proposed rule change would define the term ''account'' to mean any account of a member for which a specified adult has the authority to transact business.[25]

Because financial abuse may take many forms, FINRA has proposed a broad definition of ''financial exploitation.'' Specifically, financial exploitation would mean: (A) The wrongful or unauthorized taking, withholding, appropriation, or use of a specified adult's funds or securities; or (B) any act or omission by a person, including through the use of a power of attorney, guardianship, or any other authority, regarding a specified adult, to: (i) Obtain control, through deception, intimidation or undue influence, over the specified adult's money, assets or property; or (ii) convert the specified adult's money, assets or property.[26]

The proposed rule change would permit a member to place a temporary hold on a disbursement of funds or securities from the account of a specified adult if the member reasonably believes that financial exploitation of the specified adult has occurred, is occurring, has been attempted or will be attempted.[27] A temporary hold pursuant to proposed Rule 2165 may be placed on a particular suspicious disbursement(s) but not on other, non-suspicious disbursements.[28] The proposed rule change would not apply to transactions in securities.[29]

The proposed rule change would require that a member's written supervisory procedures identify the title of each person authorized to place, terminate or extend a temporary hold on behalf of the member pursuant to Rule 2165. The proposed rule change would require that any such person be an associated person of the member who serves in a supervisory, compliance or legal capacity for the member.[30]

If a member places a temporary hold, the proposed rule change would require the member to immediately initiate an internal review of the facts and circumstances that caused the member to reasonably believe that financial exploitation of the specified adult has occurred, is occurring, has been attempted or will be attempted.[31] In addition, the proposed rule change would require the member to provide notification of the hold and the reason for the hold to all parties authorized to transact business on the account, including, but not limited to, the customer, and, if available, the trusted contact person, no later than two business days after the date that the member first placed the hold.[32] While oral or written (including electronic) notification would be permitted under the proposed rule change, a member would be required to retain records evidencing the notification.[33]

The proposed rule change does not preclude a member from terminating a temporary hold after communicating with either the customer or trusted contact person. FINRA believes that a customer's objection to a temporary hold or information obtained during an exchange with the customer or trusted contact person may be used in determining whether a hold should be placed or lifted. FINRA believes that while not dispositive members should weigh a customer's objection against other information in determining whether a hold should be placed or lifted.

While the proposed rule change does not require notifying the customer's registered representative of suspected financial exploitation, a customer's registered representative may be the first person to detect potential financial exploitation. If the detection occurs in another way, a member may choose to notify and discuss the suspected financial exploitation with the customer's registered representative.

For purposes of proposed Rule 2165, FINRA would consider the lack of an identified trusted contact person, the inability to contact the trusted contact person or a person's refusal to act as a trusted contact person to mean that the trusted contact person was not available. A member may use the temporary-hold provision under proposed Rule 2165 when a trusted contact person is not available.

The temporary hold authorized by proposed Rule 2165 would expire not later than 15 business days after the date that the member first placed the temporary hold on the disbursement of funds or securities, unless sooner terminated or extended by an order of a state regulator or agency or court of competent jurisdiction.[34] In addition, provided that the member's internal review of the facts and circumstances supports its reasonable belief that the financial exploitation of the specified adult has occurred, is occurring, has been attempted or will be attempted, the proposed rule change would permit the member to extend the temporary hold for an additional 10 business days, unless sooner terminated or extended by an order of a state regulator or agency or court of competent jurisdiction.[35]

Proposed Rule 2165 would require members to retain records related to compliance with the Rule, which shall be readily available to FINRA, upon request. Retained records required by the proposed rule change are records of: (1) Requests for disbursement that may constitute financial exploitation of a specified adult and the resulting temporary hold; (2) the finding of a reasonable belief that financial exploitation has occurred, is occurring, has been attempted or will be attempted underlying the decision to place a temporary hold on a disbursement; (3) the name and title of the associated person that authorized the temporary hold on a disbursement; (4) notification(s) to the relevant parties pursuant to the Rule; and (5) the internal review of the facts and circumstances supporting the member's reasonable belief that the financial exploitation of the specified adult has occurred, is occurring, has been attempted or will be attempted.[36]

The proposed rule change would require a member that anticipates using a temporary hold in appropriate circumstances to establish and maintain written supervisory procedures reasonably designed to achieve compliance with the Rule, including procedures on the identification, escalation and reporting of matters related to financial exploitation of specified adults.[37] The proposed rule change would require that the member's written supervisory procedures identify the title of each person authorized to place, terminate or extend a temporary

[25] *See* proposed Rule 2165(a)(2).

[26] *See* proposed Rule 2165(a)(4).

[27] *See* proposed Rule 2165(b)(1)(A).

[28] FINRA recognizes that a single disbursement could involve all of the assets in an account.

[29] For example, the proposed rule change would not apply to a customer's order to sell his shares of a stock. However, if a customer requested that the proceeds of a sale of shares of a stock be disbursed out of his account at the member, then the proposed rule change could apply to the disbursement of the proceeds where the customer is a ''specified adult'' and there is reasonable belief of financial exploitation.

[30] *See* proposed Rule 2165(c)(2). This provision is intended to ensure that a member's decision to place a temporary hold is elevated to an associated person with appropriate authority.

[31] *See* proposed Rule 2165(b)(1)(C).

[32] *See* proposed Rule 2165(b)(1)(B). FINRA understands that a member may not necessarily be able to speak with or otherwise get a response from such persons within the two-business-day period. FINRA would consider, for example, a member's mailing a letter, sending an email, or placing a telephone call and leaving a message with appropriate person(s) within the two-business-day period to constitute notification for purposes of proposed Rule 2165. Moreover, as further discussed herein, FINRA would consider the inability to contact a trusted contact person to mean that the trusted contact person was not available for purposes of the Rule.

[33] *See* proposed Rule 2165(d).

[34] *See* proposed Rule 2165(b)(2).

[35] *See* proposed Rule 2165(b)(3).

[36] *See* proposed Rule 2165(d).

[37] *See* proposed Rule 2165(c)(1).

hold on behalf of the member pursuant to the Rule.[38] The proposed rule change would also require a member that anticipates placing a temporary hold pursuant to the Rule to develop and document training policies or programs reasonably designed to ensure that associated persons comply with the requirements of the Rule.[39]

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be no later than 180 days following publication of the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[40] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change will promote investor protection by relieving members from FINRA rules that might otherwise discourage them from exercising discretion to protect customers through placing a temporary hold on disbursements of funds or securities. Such a hold, combined with contacting a trusted contact person, also may assist these customers in stopping unwanted disbursements and better protecting themselves from financial exploitation.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. All members would be subject to the proposed amendments to Rule 4512, so they would be affected in the same manner, and FINRA has narrowly tailored the requirements to minimize the impacts on members. Moreover, proposed Rule 2165 is a safe-harbor provision that permits, but does not require, members to place temporary holds on disbursements in appropriate circumstances.

The population of seniors and other vulnerable adults in the United States is large. According to the U.S. Department of Health and Human Services, the number of older Americans (persons 65 years of age or older) is estimated to be 44.7 million, slightly over 14% of the U.S. population.[41] Of these Americans, approximately 57%, just under 25.5 million individuals, are invested in the stock market.[42] Further, in a recent survey, 75% of older households—that is, those where the survey respondent was 65 years of age or older—reported having securities investments in retirement or taxable accounts. This compares to only 61% for households where the survey respondent was younger than 65.[43] These figures represent conservative estimates of the individuals who may be better protected by this proposed rule change as it excludes any estimate of other vulnerable adults along with the anticipated continued growth of the older population.

As noted above, the proposed rule change would provide members with a way to quickly respond to situations in which they have a reasonable basis to believe that financial exploitation of vulnerable adults has occurred or will be attempted. The proposed rule change not only better safeguards customers, to the extent that members today do not provide additional protections for specified adults, but also better protects those members that are already doing so. FINRA believes that the proposed rule change would protect investors by relieving members from FINRA rules that might otherwise discourage members from exercising discretion to protect customers through placing a temporary hold on disbursements of funds or securities. Such a hold, combined with notifying a trusted contact person, also may assist these customers in stopping unwanted disbursements and better protecting themselves from financial exploitation.

FINRA does not believe that the proposed rule change will impose undue operational costs on members. The proposed amendments to Rule 4512 would require members to attempt to collect the name and contact information for a trusted contact person at the time of account opening or, with respect to existing accounts, in the course of the member's routine and customary business. Members also would incur additional responsibilities to provide disclosure about the member's right to share certain personal information with the customer's trusted contact person.

While FINRA recognizes that there will be some operational costs to members in complying with the proposed trusted contact person requirement, FINRA has lessened the cost of compliance by not requiring members to notify the trusted contact person of his or her designation as such. Furthermore, the proposed rule change would permit a member to deliver the disclosure and notification required by Rule 4512 or 2165 in paper or electronic form thereby giving the member alternative methods of complying with the requirements.

In addition, there may be impacts with respect to legal risks and attendant costs to members that choose to rely on the proposed rule change in placing temporary holds on disbursements, although the direction of the impact is ambiguous. The proposed rule change may provide some legal protection to members if they are sued for withholding disbursements where there is a reasonable belief of financial exploitation as they can point to the rule as a rationale for their actions. At the same time, while proposed Rule 2165 creates no obligation to withhold disbursements where financial exploitation may be occurring or to refrain from opening or maintaining an account where no trusted contact person is identified, the proposed rule change might serve as a rationale for a private action against members that do not withhold disbursements when there is a reasonable belief of financial exploitation. To reduce the latter risk, proposed Rule 2165 explicitly states that it provides members with a safe harbor from FINRA Rules 2010, 2150 and 11870 when members exercise discretion in placing temporary holds on disbursements of funds or securities, but does not require members to place such holds.

To the extent that members today have reasons to suspect financial exploitation of their customers, they may make judgments with regard to withholding disbursements of funds or securities. As such, these members may already face litigation risk with regard to their actions, whether or not they choose to disburse funds or securities, and without the benefit of a rule that supports their actions.

In developing the proposed rule change, FINRA considered several alternatives to help to ensure that it is narrowly tailored to achieve its purposes described previously without

[38] *See* proposed Rule 2165(c)(2).

[39] *See* proposed Supplementary Material .02 to Rule 2165.

[40] 15 U.S.C. 78*o*–3(b)(6).

[41] *See* Aging Statistics, U.S. Department of Health and Human Services Administration.

[42] *See* Gallup 2013 Economy and Personal Finance survey at *http://www.gallup.com/poll/162353/stock-ownership-stays-record-low.aspx.*

[43] *See* FINRA Investor Education Foundation's 2015 National Financial Capability Study (State-by-State Survey) at *http://www.usfinancialcapability.org/.*

imposing unnecessary costs and burdens on members or resulting in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change addresses many of the concerns noted by commenters in response to the proposal published for public comment in *Regulatory Notice* 15–37 (''*Notice* 15–37 Proposal'').

First, the *Notice* 15–37 Proposal would have prohibited a person who is authorized to transact business on an account from being designated a customer's trusted contact person under Rule 4512(a)(1)(F). Commenters raised concerns that this restriction may prohibit trustees or individuals with powers of attorney from being designated as trusted contact persons. In response to these comments, FINRA agrees that prohibiting persons authorized to transact business on an account from being designated a trusted contact person could present an overly restrictive burden on some customers. Accordingly, FINRA has proposed removing the prohibition on trusted contact persons being authorized to transact business on an account so as to permit joint accountholders, trustees, individuals with powers of attorney and other natural persons authorized to transact business on an account to be designated as trusted contact persons.

Second, under the *Notice* 15–37 Proposal, the temporary hold on disbursements of funds or securities would have expired not later than 15 business days after the date that the hold was initially placed, unless sooner terminated or extended by an order of a court of competent jurisdiction. Provided that the member's internal review of the facts and circumstances supported the reasonable belief of financial exploitation, the *Notice* 15–37 Proposal would have permitted the temporary hold to be extended for an additional 15 business days, unless sooner terminated by an order of a court of competent jurisdiction. FINRA has proposed revising the time periods to up to 15 business days in the initial period and up to 10 business days (down from 15 business days) in any subsequent period. The shortened overall period responds to commenters' concerns about disbursement delays and better aligns proposed Rule 2165 with the NASAA model. The proposed subsequent period of up to 10 business days provides members with an additional period to address the issue if concerns about financial exploitation exist after the initial period, during which time the member must contact account holders and perform an appropriate investigation. FINRA believes that the proposed time periods are appropriately tailored to provide members with an adequate time period to address concerns about financial exploitation, while also responding to commenters' concerns about disbursement delays.

Third, the *Notice* 15–37 Proposal incorporated the concept of the temporary hold being terminated or extended by an order of a court of competent jurisdiction. In response to comments, FINRA agrees that the *Notice* 15–37 Proposal may be considered overly narrow in not permitting temporary holds to be terminated or extended by a state regulator or agency of competent jurisdiction in addition to a court of competent jurisdiction. In light of the important role of state regulators and agencies in dealing with financial exploitation, FINRA has revised proposed Rule 2165 to incorporate the concept of a temporary hold being terminated or extended by a state regulator or agency in addition to a court of competent jurisdiction.

Fourth, the *Notice* 15–37 Proposal would have required a qualified person to place a temporary hold pursuant to proposed Rule 2165. Commenters suggested that the member should place a temporary hold, not the qualified person. In response to comments, FINRA has revised proposed Rule 2165 to provide that the member would place a hold under the rule. As revised, proposed Rule 2165 also would require that a member's written supervisory procedures identify the title of each person authorized to place, terminate or extend a temporary hold on behalf of the member pursuant to Rule 2165, and that any such person be an associated person of the member who serves in a supervisory, compliance or legal capacity for the member. In addition, proposed Rule 2165 would require that a member's records include the name and title of the associated person that authorized the temporary hold on a disbursement. FINRA believes that the revised proposed rule change is appropriately tailored to apply the obligations at the member-level, while preserving a role for associated persons serving in a supervisory, compliance or legal capacity in placing, terminating or extending the hold on behalf of the member.

Fifth, the *Notice* 15–37 Proposal would have required that the supervisory, compliance or legal capacity be ''reasonably related to the account'' in question. Commenters raised concerns over how they should determine whether the capacity was reasonably related to the account, citing in particular some members' practice of using a centralized group to respond to senior or fraud issues. After considering these comments, FINRA is now proposing to eliminate the requirement that the supervisory, compliance or legal capacity be ''reasonably related to the account.''

Sixth, under the *Notice* 15–37 Proposal, if the trusted contact person was not available or the member reasonably believed that the trusted contact person was involved in the financial exploitation of the specified adult, the member would have been required to contact an immediate family member, unless the member reasonably believed that the immediate family member was involved in the financial exploitation of the specified adult. Some commenters raised operational and privacy concerns regarding disclosing information to an immediate family member who the customer did not designate as a trusted contact person. In response to comments, FINRA has proposed removing the requirement to contact an immediate family member under proposed Rule 2165.

For these reasons, FINRA believes that the proposed rule change would strengthen FINRA's regulatory structure and provide additional protection to investors without imposing any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change was published for comment in *Regulatory Notice* 15–37 (October 2015). FINRA received 40 comment letters in response to the *Notice* 15–37 Proposal. A copy of *Notice* 15–37 is attached as Exhibit 2a to this filing.[44] Copies of the comment letters received in response to *Notice* 15–37 are attached as Exhibit 2c to this filing.[45] The comments and FINRA's responses are set forth in detail below.

General Support and Opposition to the Notice 15–37 Proposal

Twenty-seven commenters supported FINRA's efforts to protect seniors and other vulnerable adults but did not support all aspects of the proposal.[46]

[44] Exhibits to File No. SR–FINRA–2016–039 are available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA, and at the Commission's Public Reference Room.

[45] *See* Exhibit 2b to this filing for a list of abbreviations assigned to commenters.

[46] *See* Cowan, IJEC, NAELA, CFA Institute, GSU, Commonwealth, NAPSA, ICI, PIABA, CAI, Cetera, Lincoln, Miami Investor Rights Clinic, PIRC, AARP, Wells Fargo, NASAA, FSI, SIFMA, Coughlin,

Continued

Chambers supported the proposal as promoting investor protection and preventing fraud in customer accounts. Twelve commenters raised significant concerns about the proposal.[47]

FINRA has considered the concerns raised by commenters and, as discussed in detail below, has addressed many of the concerns noted by commenters in response to the *Notice* 15–37 Proposal. Seniors are constantly subjected to a spectrum of exploitation scams, including scams centered on financial exploitation.[48] FINRA believes that the proposed rule change is needed to provide members with a defined way to respond to situations where there is a reasonable belief of financial exploitation of seniors and other vulnerable adults, including the ability to share customer information with a trusted contact person. Furthermore, the proposed rule change would promote investor protection by providing members with a safe harbor from FINRA rules that might otherwise discourage them from exercising discretion to protect customers through placing a temporary hold on disbursements of funds or securities.

As noted above, studies indicate that financial exploitation is the most common form of elder abuse and is a growing concern.[49] A member's relationship with its customers and its knowledge of customers' accounts and financial situations may enable the member to detect unusual account activity or other indicators of possible financial exploitation. However, due to uncertainty about the ability to place holds on disbursements under FINRA rules or privacy-related concerns about sharing customer information, members may be unsure how to proceed when there is a reasonable belief of financial exploitation.

Safe Harbor

Proposed Rule 2165 would provide members with a safe harbor from FINRA Rules 2010, 2150 and 11870 when members exercise discretion in placing temporary holds on disbursements of funds or securities from accounts of specified adults under the circumstances denoted in the Rule.

FSI supported providing a safe harbor when members choose to place temporary holds on disbursements of funds or securities from the account of a specified adult. CFA Institute supported providing a safe harbor, but stated that FINRA should encourage, not just permit, members to make use of the safe harbor. Rather than providing a safe harbor when members choose to place temporary holds, three commenters supported requiring members to place temporary holds where there is a reasonable belief of financial exploitation.[50] PIABA further supported penalizing members for willfully ignoring evidence of financial exploitation.

The proposed rule change retains the approach in the *Notice* 15–37 Proposal. FINRA believes that a member can better protect its customers from financial exploitation if the member can use its discretion in placing a temporary hold on a disbursement of funds or securities from a customer's account.

Other commenters supported expanding the scope of the safe harbor. CAI supported expanding the scope of the safe harbor to explicitly extend to situations in which: (1) A name and contact information for a trusted contact person has not been obtained for an existing account; and (2) the member was not able to obtain a name and contact information for a trusted contact person for an account. If, despite reasonable efforts, the member is unable to obtain or the customer declines to provide the name and contact information for a trusted contact person, FINRA would consider the trusted contact person to be ''unavailable'' for purposes of proposed Rule 2165. The unavailability of a trusted contact person would not preclude a member from availing itself of the safe harbor in proposed Rule 2165. Furthermore, for existing accounts, a member may avail itself of the safe harbor even if the member had not yet sought to obtain trusted contact person information in the course of its routine and customary business.

FIBA supported expanding the scope of the safe harbor to explicitly cover a decision by a member that a temporary hold is not appropriate, as well as the due diligence process leading to the decision. Similarly, SIFMA suggested that the scope of the safe harbor be extended to cover the final decision of a member that financial exploitation of a specified adult has occurred. FINRA does not interpret the proposed safe harbor from FINRA rules to cover final decisions by members that financial exploitation does or does not exist. Rather, proposed Rule 2165 provides members with a safe harbor from FINRA rules when members exercise discretion in placing temporary holds on disbursements of funds or securities from the account of a specified adult. FINRA believes that the proposal is appropriately tailored to provide members with a defined way of addressing possible financial exploitation.

SIFMA suggested that the safe harbor approach should recognize that members have the ability to develop and implement alternative protection structures under existing law (*e.g.,* a customer's right to voluntarily enter into an alternative protection structure through agreement with the member). The safe harbor approach in proposed Rule 2165 does not preclude members from developing or implementing alternative protection structures consistent with existing law and FINRA rules.

Two commenters requested that FINRA clarify to which rules the safe harbor would apply.[51] In response to these comments, FINRA modified proposed Rule 2165, which now explicitly states that it provides a safe harbor from FINRA Rules 2010 (Standards of Commercial Honor and Principles of Trade), 2150 (Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts) and 11870 (Customer Account Transfer Contracts).

Three commenters supported extending the safe harbor protection of proposed Rule 2165 to associated persons of the member.[52] Proposed Rule 2165 would provide a safe harbor from FINRA rules for members *and their associated persons* when placing temporary holds on disbursements in accordance with the Rule.

BDA suggested that any associated person that acted in good faith not be subject to complaints reportable on Form U4 (Uniform Application for Securities Industry Registration or Transfer). The proposed safe harbor from FINRA rules would not extend to complaints about an associated person that are reportable on Form U4. An associated person may respond to any such complaints on Form U4, including with an explanation of actions taken pursuant to proposed Rule 2165. The proposed safe harbor from FINRA rules also would not extend to reporting required pursuant to FINRA Rule 4530

Yaakov, IRI, First U.S. Community Credit Union, NAIFA, Alzheimer's Assoc., BDA and GWFS.

[47] *See* FSR, FIBA, Thomson, Girdler, Christian Financial Services, Rich, Stoehr, Ros, Hayden, Anderson, Liberman and Pisenti.

[48] *See, e.g.,* New York State Elder Abuse Prevention Study (stating that financial exploitation was the most common form of mistreatment self-reported by study respondents); and National Adult Protective Services Association: Policy & Advocacy—Elder Financial Exploitation (discussing the widespread nature of financial exploitation of seniors and vulnerable adults) available at *http://www.napsa-now.org/policy-advocacy/exploitation/.*

[49] *See supra* notes 3 and 6.

[50] *See* GSU, PIABA and Miami Rights Clinic.

[51] *See* CAI and SIFMA.

[52] *See* Cetera, NAIFA and BDA.

(Reporting Requirements), although FINRA would consider whether a member or associated person had acted consistent with the proposed rule when FINRA assesses reported information about a hold on a disbursement.

NAIFA suggested that the reference to the safe harbor from FINRA rules be moved out of Supplementary Material and into the body of proposed Rule 2165. Because Supplementary Material is part of the rule, FINRA declines to move the reference as requested.

Alternative Approaches

FINRA requested comment in the *Notice* 15–37 Proposal regarding approaches other than the proposed rulemaking that FINRA should consider. Two commenters suggested that FINRA adopt a principles-based approach that would allow a member to develop policies and procedures to fit its business model.[53] FINRA declines to make the suggested change. The safe harbor approach in proposed Rule 2165 is optional for members. Moreover, FINRA believes that the safeguards outlined in the safe harbor approach are important so that the ability to place temporary holds is not abused.

Liberman suggested that FINRA consider alternatives to the proposed rule change, such as working more closely with authorities that are knowledgeable about financial exploitation of seniors. FINRA has long had a strong interest in issues related to financial exploitation of seniors and other vulnerable adults. FINRA has extensive knowledge about financial exploitation of seniors, including working with members, federal and state agencies, and senior groups, and in administering the Seniors Helpline. Based on that information, FINRA believes that the ability to place temporary holds on disbursements is an important tool to guard against financial exploitation of seniors and other vulnerable adults.[54]

Pisenti suggested establishing a government hotline for members to provide information about customers and allowing the hotline's staffers to address the situation, including providing a reasonable time to delay disbursements under the guidance of the staffers. Certain states require reporting of suspected financial exploitation to adult protective services or another agency, and FINRA expects members to comply with these state reporting requirements. However, with the right tools, members may be able to more effectively serve as the first line of defense against financial exploitation of seniors and other vulnerable adults. As discussed above, financial exploitation can occur suddenly and cause irreversible damage to customers' assets if action is not taken before funds or securities are disbursed. The proposed rule change would thus provide members with a critical tool to further protect customers from financial exploitation by explicitly allowing members to place temporary holds on disbursements of funds or securities consistent with the rule's requirements.

Anderson suggested requiring that members monitor accounts of senior customers for possible fraud rather than permitting members to place temporary holds on disbursements. FINRA recognizes that allowing members to place temporary holds on disbursements of funds or securities may be viewed as a significant action. Accordingly, the proposed rule change would impose numerous safeguards to help ensure that temporary holds are used only in appropriate circumstances and for the protection of customers. FINRA believes that members understand the problem of financial exploitation and will act to address potential financial exploitation of customers. A temporary hold would halt a potentially fraudulent disbursement or other problematic situation quickly, before significant harm to the customer occurs.

Reasonable Belief of Financial Exploitation

The proposed rule change would permit members to place a temporary hold on disbursements of funds or securities where there is a reasonable belief of financial exploitation of a specified adult. Cetera requested guidance as to what would constitute a reasonable belief of financial exploitation. Ros commented that the reasonable belief standard is vague.

Other commenters suggested alternatives to the reasonable belief standard. Cowen commented that the reasonable belief standard may be too high and suggested instead ''substantial suspicion'' of potential fraud or abuse as the standard. To cover red flags of financial exploitation, FSR suggested an alternative standard of a ''reasonable basis to suspect the customer may be the subject of financial exploitation.'' AARP suggested that FINRA consider requiring members and their associated persons to act with ''reasonable care.''

FINRA believes that the proposed standard is appropriate in that it permits members to use their judgment, based on their assessment of the facts, to place temporary holds without requiring actual knowledge of financial exploitation. The reasonable belief standard is present in other FINRA rules (*e.g.,* FINRA Rules 2040 (Payments to Unregistered Persons) and 2111 (Suitability)). The standard also is consistent with similar state statutes and the NASAA model.

While not required by the proposed rule change, members may find it beneficial to develop their own red flags to guide the formation of a reasonable belief of financial exploitation. Among the commonly identified red flags of potential financial exploitation are: (1) Attempts to transfer money to engage in commonly known fraudulent schemes (*e.g.,* foreign lottery schemes); (2) uncharacteristic attempts to wire securities or funds, particularly with a customer who is unable to explain the attempts; (3) when a caretaker, relative, or friend of the customer requests disbursements on behalf of the customer without proper documentation; (4) abrupt increases in disbursements, particularly with a customer who is accompanied by another person who appears to be directing the disbursements; (5) attempted forgery of the customer's signature on account documentation or a power of attorney; and (6) a customer's unusual degree of fear, anxiety, submissiveness or deference related to another person. While not dispositive, red flags may be used by members to detect and prevent financial exploitation.

Three commenters suggested expanding the proposed rule change beyond financial exploitation of specified adults to permit temporary holds on disbursements of funds and securities when a customer is showing signs of diminished capacity.[55] FINRA appreciates that diminished capacity can make seniors especially vulnerable to financial exploitation and believes that the proposed rule would cover most situations involving questionable disbursements by customers suffering from such a condition. In many instances where a customer is suffering from diminished capacity and requests that a member make a potentially problematic disbursement, the member is likely to have a reasonable belief, at least initially, that financial exploitation may be occurring. For those situations where that may not be the case, FINRA recognizes that this is an important issue for future consideration.

Definition of ''Specified Adults''

The proposed rule change would define ''specified adults'' to include: (A) A natural person age 65 and older; or (B)

[53] *See* FSR and Lincoln.

[54] *See also supra* note 9 (regarding state laws) and NASAA model.

[55] *See* NAELA, Lincoln and Alzheimer's Assoc.

a natural person age 18 and older who the member reasonably believes has a mental or physical impairment that renders the individual unable to protect his or her own interests. FINRA requested comment in the *Notice* 15–37 Proposal regarding whether the ages used in the definition of ''specified adult'' in proposed Rule 2165 should be modified or eliminated.

Two commenters suggested extending the proposed rule change to apply to all customers and not be otherwise limited.[56] Cetera suggested raising the age in the proposed definition above 65, which it believes is under the age of retirement for many customers. Other commenters suggested lowering the age in the proposed definition from 65 to 60.[57] FINRA has proposed defining specified adults to include natural persons age 65 and older. Federal agencies, FINRA and NASAA have focused on persons age 65 and older for various senior initiatives.[58] Moreover, FINRA believes that the concentration of wealth among older investors makes this group more vulnerable to financial exploitation.[59] With regard to suggestions to extend coverage to all customers, the proposed rule, as discussed above, also would apply to natural persons age 18 and older who the member reasonably believes has a mental or physical impairment that renders the individual unable to protect his or her own interest. FINRA believes that these two categories of ''specified adults'' appropriately protect those adults who are most vulnerable to financial exploitation and that they are therefore neither over nor under inclusive in scope.

Ros commented that the application of the proposed rule change to persons age 65 and older is an unreasonable intrusion into the financial affairs of competent adults. Proposed Rule 2165 would permit placing a temporary hold only where there is a reasonable belief of financial exploitation and only with regard to a specific disbursement(s). Given these limitations, FINRA does not believe that the proposed rule change is an unreasonable intrusion into the financial affairs of customers.

NAPSA suggested revising the definition to cover natural persons age 60 and older or a natural person deemed vulnerable under a state's adult protective services statute. FINRA believes that this approach would present operational challenges for members as the customers covered by the definition would vary by jurisdiction. As such, FINRA declines to make the suggested change.

Girdler suggested that the definition of specified adult be modified to consider customer vulnerability due to circumstances beyond cognitive ability. In contrast, CAI suggested that, because of administrative challenges in implementing the definition, vulnerable adults should be removed from the definition. FINRA has proposed defining ''specified adults'' to include an adult who the member reasonably believes has a mental or physical impairment that renders the individual unable to protect his or her own interests. FINRA declines to omit such individuals from the definition of specified adult; however, FINRA also declines at this time to expand the definition to include additional potentially vulnerable adults. FINRA recognizes that customers who do not have a physical or mental impairment may also be vulnerable; however, the proposed rule change is intended to cover those customers most susceptible to financial exploitation.

Some commenters requested that FINRA provide guidance as to what would constitute a mental or physical impairment covered by the proposed definition.[60] Members have reasonable latitude in determining whether there is a mental or physical impairment that renders an adult unable to protect his or her own interests for purposes of the Rule. A member may base such a determination on the facts and circumstances observed in the member's business relationship with the person or on other sources of information, such as a court or government agency order.

SIFMA requested clarification as to whether the definition would cover temporary impairments, as well as permanent or chronic impairments. FINRA would consider the proposed rule change to apply to temporary, as well as permanent or chronic impairments that render an adult unable to protect his or her own interests.

NAIFA suggested revising proposed Supplementary Material .03 to Rule 2165 to provide that a member's belief of a customer's impairment shall not create an assumption or implication that the member or its associated persons are qualified to make determinations about a customer's impairment. While FINRA declines to revise the proposed Supplementary Material as suggested, FINRA does not intend proposed Rule 2165 to create an assumption or implication that a member or its associated persons are qualified to make impairment determinations beyond the limited purposes of the proposed rule. A member's relationship with its customers and its knowledge of customers' accounts and financial situations puts the member in a unique position to thwart possible financial exploitation. The proposal will aid members in doing so.

CAI suggested that FINRA work with state regulators to ensure consistency between the proposed rule change and state requirements for members. As discussed below, while the proposed rule change and NASAA model are not identical, FINRA and NASAA have worked together to achieve consistency where possible and appropriate.

Definition of ''Qualified Person''

In the *Notice* 15–37 Proposal, a ''qualified person'' was defined to include an associated person of a member who serves in a supervisory, compliance or legal capacity that is reasonably related to an account. FINRA requested comment in the *Notice* 15–37 Proposal regarding whether the scope of the persons included in the definition of ''qualified person'' in proposed Rule 2165 be modified.

Some commenters suggested expanding the proposed definition to include all employees,[61] all associated persons[62] or all registered persons of a member.[63] GWFS suggested that the definition cover associated persons designated as qualified by the member. PIABA further suggested that, at a minimum, registered representatives should be required to report any suspicious behavior or conduct to a supervisor. FSR suggested that persons serving in a legal or compliance capacity not be included in the definition of ''qualified person,'' as such persons would seldom witness events that would provide a reasonable belief of financial exploitation.

Under the proposed rule change, a member's written supervisory procedures shall identify the title of each person authorized to place, terminate or extend a temporary hold on behalf of the member pursuant to proposed Rule 2165. Furthermore, any such person shall be an associated person of a member who serves in a supervisory, compliance or legal capacity. While the benefits of preventing financial exploitation are significant to both the member and customer, placing a temporary hold on a disbursement is a serious action on the part of a member and may lead to

[56] *See* Cowan and Thomson.

[57] *See* IRI, Wells Fargo, NASAA and SIFMA.

[58] *See supra* note 22. *See also* NASAA model.

[59] *See supra* note 21.

[60] *See* SIFMA, Cetera and GWFS.

[61] *See* NASAA.

[62] *See* Wells Fargo.

[63] *See* GSU and PIABA.

difficult but necessary conversations with customers that could impact the member-customer relationship. Given the seriousness of placing a temporary hold on a disbursement, FINRA believes that it is reasonable to limit authority for placing holds on disbursements to a select group of individuals associated with the member and believes that persons serving in a supervisory, compliance or legal capacity are well positioned to make these determinations on behalf of the member.

The scope of proposed Rule 2165(c)(2) does not cover registered representatives who are not otherwise serving in supervisory, compliance or legal capacities. FINRA recognizes that registered representatives may often be the first persons to notice behavior or conduct indicating financial exploitation. To encourage appropriate escalation of these matters, proposed Rule 2165(c)(1) would require that a member relying on proposed Rule 2165 establish and maintain written supervisory procedures related to the escalation of matters involving the financial exploitation of specified adults. As such, FINRA believes that it is reasonable to expect a registered representative to report any suspicious behavior or conduct to a supervisor or a person serving in a compliance or legal capacity.

Some commenters suggested clarifying or eliminating the requirement in the *Notice* 15–37 Proposal that the associated person serve in a supervisory, compliance or legal capacity that is ''reasonably related to an account.'' [64] In light of commenters' concerns regarding how to determine whether a person is serving in a supervisory, compliance or legal capacity that is ''reasonably related to an account,'' FINRA has proposed eliminating the ''reasonably related to an account'' requirement.

To apply the obligations at the member-level, not the individual level, SIFMA suggested replacing ''qualified person'' with ''member'' in the provisions in proposed Rule 2165 related to the decision to place a temporary hold. FINRA has revised proposed Rule 2165 to provide that the member may place the hold on a disbursement, provided that the member's written supervisory procedures identify the title of each person authorized to place, terminate or extend a hold on behalf of the member and that each such person be serving in a supervisory, compliance or legal capacity for the member. In addition, proposed Rule 2165 would require that a member's records include the name and title of the associated person who authorized the temporary hold on a disbursement.

Definition of ''Account''

The proposed rule change would define ''account'' to mean any account of a member for which a specified adult has the authority to transact business. FINRA requested comment in the *Notice* 15–37 Proposal regarding whether the definition of account should be expanded to include accounts for which a specified adult is a named beneficiary.

Some commenters supported expanding the definition of account to accounts for which a specified adult is a named beneficiary.[65] Commonwealth did not support expanding the definition to include accounts for which a specified adult is a named beneficiary. FINRA recognizes that members may not have current contact information for each named beneficiary. In addition, members may lack other critical information about beneficiaries that would preclude them from forming a reasonable belief that the beneficiaries are the subject of financial exploitation. Due to the operational challenges for members in applying the proposed rule to beneficiaries, FINRA has not proposed including accounts for which a specified adult is a named beneficiary.

BDA suggested excluding accounts where there is a designated guardian, custodian or power of attorney because such accounts should receive protection under FINRA rules beyond the scope of the safe harbor. If these accounts are included in the scope of the proposal, BDA suggested that members should be provided with a heightened level of protection when they suspect financial exploitation by a designated guardian, custodian or power of attorney ''since the account holder themselves would have had to know that this person has transaction capacity for the account, resulting in an enhanced burden to the firm when suspicion arose.'' It is not clear what heightened protections the commenter suggests for members with respect to accounts where there is a designated guardian, custodian or power of attorney. As discussed above, the proposed rule does not require members to place temporary holds on disbursements of funds or securities, and FINRA does not intend to provide through the proposed rule change additional protections on accounts where there is guardian, custodian or power of attorney.

Disbursements

The proposed rule change would permit members to place temporary holds on disbursements of funds or securities. The proposed rule change would not apply to transactions in securities. Some commenters supported extending the proposed rule change to apply to transactions in securities.[66] While the proposed rule change does not apply to transactions, FINRA may consider extending the safe harbor to transactions in securities in future rulemaking.

PIABA requested that the proposed rule change define ''disbursement.'' PIABA also requested that FINRA clarify that the temporary hold may be placed on particular disbursement(s). FINRA would consider a disbursement to include a movement of cash or securities out of an account. In addition, a temporary hold pursuant to proposed Rule 2165 may be placed on a particular suspicious disbursement(s) but not on other, non-suspicious disbursements (*e.g.,* member may choose to place a hold on a questionable disbursement but not on a contemporaneous regular mortgage or tax payment where there is no reasonable belief of exploitation regarding such payment).

Two commenters requested that FINRA explicitly permit temporary holds on Automated Customer Account Transfer Service (''ACATS'') transfers under the proposed rule change.[67] For purposes of proposed Rule 2165, FINRA would consider disbursements to include ACATS transfers but, as with any temporary hold, a member would need to have a reasonable belief of financial exploitation in order to place a temporary hold on the processing of an ACATS transfer request pursuant to the Rule. FINRA also reminds members of the application of FINRA Rule 2140 (Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes) to the extent that there is not a reasonable belief of financial exploitation.

FINRA recognizes that, depending on the facts and circumstances, placing a temporary hold on the processing of an ACATS transfer request could also lead the member to place a temporary hold on all assets in an account, for the same reasons. However, if a temporary hold is placed on the processing of an ACATS transfer request, the member must permit disbursements from the account where there is not a reasonable belief of financial exploitation regarding such disbursements (*e.g.,* a customer's regular

[64] *See* FSR, BDA and SIFMA.

[65] *See* IJEC, AARP and SIFMA.

[66] *See* IRI, FSR, Lincoln, SIFMA and FSI.

[67] *See* FSR and SIFMA.

bill payments). FINRA emphasizes that where a questionable disbursement involves less than all assets in an account, a member may not place a blanket hold on the entire account. Each disbursement must be analyzed separately.

While supporting the proposed rule change, Yaakov requested clarification about how the proposed rule change would apply to certain types of disbursements from a customer's account. Specifically, Yaakov requested that the proposed rule change provide that disbursements would include payments from a customer's account to a customer's bank. Yaakov also requested that FINRA clarify whether a temporary hold may be placed on disbursements related to a customer's checkbook, credit card or debit card associated with a brokerage account at a member. FINRA would consider disbursements to include, among other things, questionable payments to a bank or other financial institution, credit/debit card payments or issued checks associated with a brokerage account at a member. However, members need to consider the recipient of the disbursement when determining whether there is a reasonable belief of financial exploitation. For example, a monthly disbursement to a customer's mortgage lender likely represents a lower risk of financial exploitation than a one-time, sizable disbursement to a non-U.S. person. In addition, the temporary hold is on the disbursement-level not the account-level, so that a member must permit a disbursement where there is not a reasonable belief of financial exploitation (*e.g.,* a regular mortgage payment to a bank), but may place a temporary hold on another disbursement where there is a reasonable belief of financial exploitation.

CAI questioned whether the ability to place temporary holds on disbursements would conform to the requirements of Section 22(e) of the Investment Company Act of 1940 (''1940 Act'') for redemptions of a redeemable security. CAI noted that the proposed rule change could be seen as reconcilable with the 1940 Act requirements to the extent that a disbursement request directed to a broker-dealer does not constitute a disbursement request to the issuer of a variable annuity. Section 22(e) of the 1940 Act generally prohibits registered funds from suspending the right of redemption, or postponing the date of payment or satisfaction upon redemption of any redeemable security for more than seven days after tender of such security to the fund or its agent, except for certain periods specified in that section. The safe harbor under proposed Rule 2165 applies to disbursements of proceeds and securities and does not apply to transactions, including redemptions of securities.

Most mutual fund customer accounts are serviced and record kept by intermediaries, such as broker-dealers. FINRA does not believe that a member's ability to place a hold on a disbursement of proceeds from its customer's account under the proposed rule change creates a conflict with Section 22(e) of the 1940 Act as the mutual fund does not have a role in the disbursement from the customer's account held by an intermediary.

In certain limited circumstances, the customer's account may be maintained by a mutual fund's principal underwriter. In light of the role of the principal underwriter with respect to these accounts, the ability to place a temporary hold on a disbursement of proceeds under the proposed rule change may be viewed as conflicting with Section 22(e) of the 1940 Act.

Period of Temporary Hold

Under the *Notice* 15–37 Proposal, the temporary hold on disbursements of funds or securities would have expired not later than 15 business days after the date that the hold was initially placed, unless sooner terminated or extended by an order of a court of competent jurisdiction. In addition, provided that the member's internal review of the facts and circumstances supported the reasonable belief of financial exploitation, the *Notice* 15–37 Proposal would have permitted the temporary hold to be extended for an additional 15 business days, unless sooner terminated by an order of a court of competent jurisdiction. FINRA requested comment in the *Notice* 15–37 Proposal on whether the permissible time periods for placing and extending a temporary hold pursuant to proposed Rule 2165 should be modified.

Some commenters supported permitting longer time periods. IRI supported changing the time periods to 45 business days for the initial period and an additional 45 business days for any subsequent period. IRI also supported automatic extensions of the temporary hold upon notification to FINRA until such time that a court of competent jurisdiction or FINRA takes action.

First U.S. Community Credit Union commented that 15 business days may not be sufficient time for a member to obtain a court order or receive input from adult protective services. FIBA commented that the proposed time periods may not be sufficient, particularly for non-U.S. customers and suggested that FINRA create different time periods or establish different processes for non-U.S. customers. CAI suggested changing the time periods to 25 business days for the initial period to recognize the need to have adequate time at the outset and an additional 10 business days for any subsequent period.

FSR supported permitting members to place a temporary hold for any period of time within the reasonable discretion of the member or until a third party (*e.g.,* a court of competent jurisdiction or adult protective services) notified the member that the hold has expired or subsequent events indicate that the threat of financial exploitation no longer exists.

Other commenters supported shorter time periods. AARP suggested that the temporary hold expire no later than 10 business days after the hold is placed. NASAA commented that the proposed time periods were too long. NASAA supported requiring both FINRA and state regulatory review of any extension of a temporary hold by a member.

FINRA has proposed revising the time periods to up to 15 business days in the initial period and up to 10 business days (down from 15 business days) in any subsequent period. These time periods are consistent with the NASAA model and the shortened extension period responds to commenters' concerns about disbursement delays. The proposed extension period of up to 10 business days provides members with a longer period to address the issue if concerns about financial exploitation exist after the initial period, during which time the member must contact persons authorized to transact business on the account and trusted contact persons, as available, and perform an appropriate investigation.

CFA Institute supported giving a member the ability to extend the temporary hold for an additional period if the member's internal review supported the additional time period. FINRA has tried to strike a reasonable balance in giving members adequate time to investigate and contact the relevant parties, as well as seek input from a state regulator or agency (*e.g.,* state securities regulator or state adult protective services agency) or a court order if needed, but also not permitting an open-ended or overly long hold period in recognition of the seriousness of placing a temporary hold on a disbursement.

SIFMA supported the proposed time periods but suggested including language permitting the expiration or

extension of the hold as otherwise permitted by state or federal law, through agreement with the specified adult or their authorized representative, or in accordance with prior written instructions or lawful orders, or sooner terminated or extended by an order of a court of competent jurisdiction. SIFMA also suggested that an investigating state government regulator or agency should be able to terminate or extend a hold on a disbursement. FINRA has revised proposed Rule 2165 to incorporate the concept of a temporary hold being terminated or extended by a state regulator or agency in addition to a court of competent jurisdiction.

FINRA has not revised proposed Rule 2165 to expressly permit lifting the hold ''through agreement with the specified adult or their authorized representative, or in accordance with prior written client instructions or lawful orders.'' While the proposed rule change would not prohibit members from lifting a hold, for example, upon a determination that there is no financial exploitation, FINRA believes that the commenter's suggested language is overly broad (*e.g.,* allowing an authorized representative to lift the hold may enable an abuser to lift the hold and gain access to the customer's funds).

Lincoln requested that FINRA provide guidance on what members should do after the expiration of the temporary hold. Alzheimer's Assoc. requested clarification on the process for lifting or extending a temporary hold. FINRA believes that the proposed time period of up to 25 business days total is sufficient time for a member to resolve an issue. Moreover, the proposed rule change allows the time to be further extended by a court or a state regulator or agency. If a member is unable to resolve an issue due to circumstances beyond its control, there may be circumstances in which a member may hold a disbursement after the period provided under the safe harbor. A member should assess the facts and circumstances to determine whether a disbursement is appropriate after the expiration of the period provided in the safe harbor.

BDA questioned whether the proposed rule change would only permit terminating the temporary hold with an order of a court of competent jurisdiction. The proposed rule change would not prohibit a member from lifting a hold without a court order, provided that the member would have to comply with an order of a court of competent jurisdiction or of a state regulator or agency terminating or extending a temporary hold.

ICI supported limiting the number of temporary holds that a member may place on an account during a calendar year or other specified period. FINRA declines to limit the number of holds that a member may place. However, taking into account a member's size and business, FINRA would closely examine a member that places an outsized number of holds on customer accounts to determine whether there was any wrongdoing on the part of the member.

Potential Harm

Some commenters expressed concern that permitting members to place temporary holds may result in customer harm. NAPSA supported allowing members to place temporary holds where there is a reasonable belief of financial exploitation but suggested that members be required to take measures to ensure that any holds will not cause undue harm to customers (*e.g.,* if a customer's payments are not made in a timely manner).

Some commenters questioned whether the proposed rule change would permit lifting a temporary hold if the customer disagrees with the hold.[68] Rich expressed concern that a temporary hold may result in a customer defaulting on legal or contractual obligations and supported a mechanism other than a court order for lifting the hold (*e.g.,* the trusted contact person's approval to lift the hold). Liberman expressed concern that the proposed rule change could be abused by members in refusing to disburse funds or securities. ICI supported FINRA providing customers with recourse for lifting the temporary hold other than obtaining a court order and indicated that such recourse may limit a member's civil liability.

FINRA recognizes that placing a temporary hold on a disbursement is a serious step for a member and the affected customer. While FINRA recognizes that customers may be affected by temporary holds, the costs of financial exploitation can be significant and devastating to customers, particularly older customers who rely on their savings and investments to pay their living expenses and who may not have the ability to offset a significant loss over time. FINRA believes that the harm to customers of financial exploitation justifies permitting members to place temporary holds.

To minimize the potential harm to customers that may arise from unnecessarily holding customer funds, FINRA believes that members should consider the recipient of the disbursement in determining whether there is a reasonable belief of financial exploitation. As noted above, FINRA believes that members should weigh a customer's objection against other information in determining whether a hold should be placed or lifted. While not dispositive, a customer's objection and explanation may indicate to the member that the hold should be lifted.

FIBA commented that the proposed rule change does not explicitly contemplate the customer disagreeing with the temporary hold and that relying on a trusted contact person to maintain a hold may conflict with the interests of the customer. Although FINRA believes that a member may use its discretion in relying on any information provided by the trusted contact person, a member also must consider a customer's objection and explanation, as well as other pertinent facts and circumstances, in determining whether a hold should be maintained or lifted.

Legal Risks

FINRA requested comment in the *Notice* 15–37 Proposal regarding members' current practices when they suspect financial exploitation has occurred, is occurring, has been attempted or will be attempted, including whether the proposed rules would change members' current practices. Commenters did not provide any information regarding their current practices when financial exploitation of a customer is suspected.

FINRA also requested comment in the *Notice* 15–37 Proposal on members' views on any potential legal risks associated with placing or not placing temporary holds on disbursements of funds or securities at present and under the proposal. Some commenters suggested that the proposed rule change creates legal risks for members in placing or not placing a temporary hold.

Christian Financial Services objected to the proposed rule change as making ''a broker responsible for the behavior of an incapacitated senior'' and that such a rule ''invites lawsuits and abuse.'' GWFS commented that placing a temporary hold under the proposed rule change allows for discretion, which causes members to be more susceptible to litigation for acting or failing to act. GWFS also commented that the proposed rule change does not provide ''comprehensive immunity'' from liability in a civil action.

Lincoln requested that FINRA expressly state that no private right of action is created by a member's decision to place or not place a temporary hold. Cetera commented that the safe harbor

[68] *See* Stoehr and Hayden.

under proposed Rule 2165 may not protect members from liability under state laws. NAIFA requested that the proposed rule change provide protection from liability for reporting financial exploitation to state regulators.

On the other hand, PIABA commented that FINRA should clarify that a private right of action would exist when a member willfully ignores evidence of abuse. Yaakov requested that FINRA state that members would not be ''insure[d]'' for liabilities that may be created by placing a temporary hold in good faith.

FINRA believes that members today make judgments with regard to making or withholding disbursements and already face litigation risks with respect to these decisions. The proposed rule change is designed to provide regulatory relief to members by providing a safe harbor from FINRA rules for a determination to place a hold. Some states may separately provide immunity to members under state law.

To mitigate any civil claims that a member had a duty to place a temporary hold, ICI suggested that FINRA clarify in proposed Rule 2165 that: (1) No member is required by FINRA to place a temporary hold; and (2) a member's failure to place a temporary hold shall not be deemed an abrogation of the member's duties under FINRA rules. FINRA believes that Supplementary Material .01 stating that proposed Rule 2165 is a safe harbor and that the Rule does not require placing holds clearly indicates that there is not a requirement to place a hold on a disbursement.

Notifying Parties Authorized To Transact Business on the Account

Under the *Notice* 15–37 Proposal, proposed Rule 2165 would have required a member to provide notification of the hold and the reason for the hold to all parties authorized to transact business on the account no later than two business days after placing the hold.

PIRC supported requiring notification to all parties authorized to transact business on an account. SIFMA commented that the term ''authorized to transact business on an account'' is vague and can be expansive and burdensome. IRI commented that the requirement to notify all parties authorized to transact business on an account could result in a member being unable to place a temporary hold on a disbursement and suggested instead requiring that a member notify ''any'' party rather than ''all'' parties authorized to transact business on an account.

FINRA believes that each person authorized to transact business on an account should be notified that the member has placed a temporary hold on a disbursement from the account.[69] In the case of jointly held accounts, each person authorized to transact business on the account should be notified of the temporary hold on a particular disbursement.

There are a number of reasons why it is important to notify all persons authorized to transact business on the account. By reaching out to all persons authorized to transact business on an account, there is a greater likelihood of someone intervening to assist in thwarting the financial exploitation at an early stage. Moreover, persons authorized to transact business on an account would have a reasonable expectation that they would be contacted when a member places a temporary hold on a disbursement based on a reasonable belief that financial exploitation may be occurring. The notification requirement, moreover, should not impact a member's decision to place a hold as it is a post-hold obligation.

Trusted Contact Person

The proposed rule change would amend Rule 4512 to require members to make reasonable efforts to obtain the name of and contact information for a trusted contact person upon the opening of a non-institutional customer's account. In addition, under the *Notice* 15–37 Proposal, proposed Rule 2165 would have required the member to provide notification of the hold and the reason for the hold to the trusted contact person, if available, no later than two business days after placing the hold.

Some commenters supported requiring members to make reasonable efforts to obtain the name and contact information for a trusted contact person, as well as notification to the trusted contact person when a temporary hold is placed pursuant to proposed Rule 2165.[70] First U.S. Community Credit Union commented that the trusted contact person may be useful to members.

Ros and SIFMA suggested that members should have the option of seeking trusted contact person information rather than requiring it under Rule 4512. FINRA is mindful of the efforts that some members may need to undertake in order to comply with a requirement that they make reasonable efforts to obtain trusted contact person information. However, the benefits to both members and investors of having trusted contact person information when serious problems arise will be far greater. And the likelihood of members encountering situations when such information is necessary will continue to increase with the aging of our population. Moreover, trusted persons can assist members in any number of ways beyond the more serious situations of, for example, financial exploitation or diminished capacity. Members may find them helpful in administering accounts (*e.g.,* where a customer has been unresponsive to multiple contact attempts).

CAI suggested that the requirement that members make reasonable efforts to obtain the name and contact information for a trusted contact person apply only when the customer is age 55 or older. Because members may place temporary holds in situations where financial exploitation is occurring to a customer younger than age 55 who is suffering from an incapacity, it is important that members seek to obtain trusted contact person information for all customers, not simply those age 55 or older.

Some comments related to the ability to have more than one trusted contact person. IJEC suggested revising the proposal to require more than one trusted contact person and that such persons be independent of each other. Cowan suggested the alternative approach of having a ''protectors' committee'' consisting of several individuals for each account of a senior investor. SIFMA requested clarification on whether an organization or practice could be a trusted contact person and whether a customer could designate multiple contact persons. While FINRA declines to require more than one trusted contact person, the proposed rule change would not prohibit members from requesting or customers from naming more than one trusted contact person. Given the role of the trusted contact person and that the member is authorized to disclose information about the account to such person, FINRA does not believe that an organization or practice, such as a law firm or an accounting firm, could serve as the trusted contact person in the capacity intended by the proposed rule change. However, a customer could designate an attorney or an accountant as a trusted contact person.

SIFMA commented that the proposed rule change should contemplate

[69] *See* FINRA Rule 2090 (Know Your Customer) (requiring that members use reasonable diligence, in regard to the opening and maintenance of every account, to know (and retain) the essential facts concerning every customer and concerning the authority of each person acting on behalf of such customer).

[70] *See* NAPSA, ICI, PIRC and FSI.

situations where a customer orally notifies a member of the name and contact information for a trusted contact person. Rule 4512 requires that the member maintain the trusted contact person's name and contact information, as well as the written notification to the customer that the member may contact the trusted contact person. The proposed rule change would allow members to rely on oral conversations with customers that members then document, provided that the written notification requirement of proposed Supplementary Material .06 to Rule 4512 is satisfied.

With respect to notifying the trusted contact person that a temporary hold has been placed, SIFMA suggested that FINRA adopt a voluntary reporting process that is separate from the process for placing a temporary hold under proposed Rule 2165. SIFMA's concerns are twofold: (1) Potential difficulty in reaching a trusted contact person; and (2) a desire not to embarrass a customer by notifying a trusted contact person if the matter can be resolved through a discussion with the customer. Not all commenters agreed that the notification to the trusted contact person should be voluntary and some believed the requirement should be more stringent. For instance, Rich suggested a ''more substantial'' requirement than ''attempting'' to contact the trusted contact person.

Proposed Rule 2165 requires that the member notify the trusted contact person orally or in writing, which may be electronic, within two business days of placing a temporary hold. While FINRA appreciates the desire to ensure that a member actually discusses a hold with a trusted contact person, doing so may not be possible in every situation. As discussed above, FINRA would consider a member's mailing a letter, sending an email, or placing a telephone call and leaving a message with appropriate person(s) within the two-business-day period to constitute notification for purposes of proposed Rule 2165. Moreover, FINRA would consider the inability to contact a trusted contact person (*e.g.,* an email is returned as undeliverable, a telephone number is out of service or a trusted contact person does not respond to a member's notification attempts) to mean that the trusted contact person was not available for purposes of the Rule. With regard to SIFMA's concern over potentially embarrassing a customer by being required to notify a trusted contact person, FINRA notes that a member may attempt to resolve a matter with a customer before placing a temporary hold on a disbursement without having to notify a trusted contact person.[71] However, once a member places a hold on a disbursement, FINRA believes a member should notify a trusted contact person.

Rich further commented that a member should be required to notify both the customer and the trusted contact person when the member has a reasonable belief of financial exploitation. When placing a hold on a disbursement, proposed Rule 2165 would require a member to notify all persons authorized to transact business on an account, including the customer, as well as the trusted contact person, if available. Even where a member has not placed a temporary hold on an account, however, FINRA would expect a member to reach out to a customer as one step in addressing potential financial exploitation of the customer.

FSR requested that FINRA clarify that a member is not liable if it contacts a trusted contact person designated by a customer pursuant to Rule 4512 or proposed Rule 2165, so long as the customer has not directed the member to remove or replace the trusted contact person. FINRA would consider a member contacting the trusted contact person identified by a customer to be consistent with the proposed rule change, provided that the customer had not previously directed the member to remove or replace the trusted contact person.

Some commenters requested that FINRA clarify what would constitute reasonable efforts to obtain a name and contact information for a trusted contact person.[72] For purposes of the proposed rule change, FINRA would consider reasonable efforts to include actions such as incorporating a request for trusted contact person name and contact information on an account opening form or sending a letter, an electronic communication or other similar form of communication to existing customers requesting the name and contact information for a trusted contact person.

SIFMA requested that FINRA provide guidance on the appropriate place on new account forms for customers to designate a trusted contact person. Members may use their discretion in determining the appropriate place on new account forms for customers to designate a trusted contact person. Commonwealth supported the trusted contact person-related provisions and suggested that FINRA provide template language that members can use in account applications or other customer forms. If the SEC approves the proposed rule change, FINRA will make template language available for optional use by members in complying with the trusted contact person-related provisions of Rule 4512.[73]

SIFMA also requested that FINRA provide clarification as to whether the reasonable efforts requirement would apply to accounts opened after the proposed rule change becomes effective. The reasonable efforts requirement in Rule 4512 would apply to all accounts. FINRA would consider reasonable efforts for existing accounts to include asking the customer for the information when the member updates the information for the account either in the course of the member's routine and customary business or as otherwise required by applicable laws or rules.

FSR requested clarification on the role of the trusted contact person and the extent to which a member may rely on the information provided by the trusted contact person. BDA expressed concern that members could become responsible for evaluating the mental capabilities of trusted contact persons and that such capabilities could change over time. FINRA intends the trusted contact person to be a resource for a member in administering a customer's account and believes that a member may use its discretion in relying on any information provided by the trusted contact person. The proposed rule change does not make a member responsible for evaluating mental capabilities of trusted contact persons.

Requirement To Notify Trusted Contact Person of Designation

In the *Notice* 15–37 Proposal, FINRA stated that a member may elect to notify an individual that he or she was named as a trusted contact person; however, the proposal would not require notification. Some commenters supported requiring members to notify

[71] As discussed above, FINRA's proposed amendments to Rule 4512 would permit a member to contact a trusted contact person to address, among other things, potential financial exploitation. In the context of SIFMA's concern, FINRA emphasizes that Rule 4512, as amended, would permit, but not require, a member to contact a trusted contact person about financial exploitation prior to placing a temporary hold on a disbursement. Thus, a member could resolve a matter with a customer prior to placing a hold on a disbursement without having to contact a trusted contact person.

[72] *See* CAI, FSR, BDA, GWFS and SIFMA.

[73] In 2008, FINRA developed a New Account Application Template, available on FINRA's Web site that firms may use as a model form. *See http://www.finra.org/industry/new-account-application-template.* This New Account Application Template permits a customer to name a back-up contact who the member may contact. If the SEC approves the proposed rule change, FINRA will update the New Account Application Template to reflect the amendments to Rule 4512.

an individual that he or she was named as a trusted contact person.[74] Alzheimer's Assoc. supported also requiring a member to notify an individual designated as a trusted contact person if the customer later designates another individual to be his or her trusted contact person. FSR suggested that the trusted contact person should be required to acknowledge his or her role at the time of designation by the customer.

The proposed rule change does not require that a member notify a trusted contact person of his or her designation. FINRA believes that the administrative burdens of requiring notification would outweigh the benefits. However, a member may elect to notify a trusted contact person of his or her designation (*e.g.,* if the member determines that notifying the trusted contact person may be helpful in administering a customer account).

Limitations on Who Can Be a Trusted Contact Person

Under the *Notice* 15–37 Proposal, the proposed amendments to Rule 4512 would have required that the trusted contact person be age 18 or older and not be authorized to transact business on behalf of the account. Commonwealth supported the age limitation but suggested that FINRA revise the proposed rule to explicitly permit members to rely on the representations of the customer regarding the trusted contact person's age so that members do not have to independently verify the age. While FINRA declines to revise the proposed rule as suggested, FINRA would not expect a member to verify the age of a designated trusted contact person.

SIFMA requested clarification of the meaning of the term ''not authorized to transact business on the account.'' Some commenters did not support the limitation on persons not authorized to transact business on behalf of the account.[75] NAELA commented that the limitation would presumably prohibit persons with powers of attorney from serving as trusted contact persons. FSR and Lincoln supported permitting individuals with powers of attorney to be trusted contact persons. Lincoln further supported permitting trustees to be trusted contact persons.

In light of the concerns raised by commenters, FINRA has proposed removing the prohibition on those authorized to transact on the account so as to permit joint accountholders, trustees, individuals with powers of attorney and other natural persons authorized to transact business on an account to be designated as trusted contact persons.

Authorization To Contact the Trusted Contact Person

Under the *Notice* 15–37 Proposal, the proposed amendments to Rule 4512 would have required that, at the time of account opening, a member shall disclose in writing (which may be electronic) to the customer that the member or an associated person is authorized to contact the trusted contact person. In the *Notice* 15–37 Proposal, FINRA requested comment on whether Rule 4512 should require customer consent to contact the trusted contact person or if customer notice is sufficient.

Some commenters questioned whether customer notice would be sufficient under the Regulation S–P exception for disclosing information to a third party with unrevoked customer consent.[76] Lincoln suggested requiring customer consent to contact the trusted contact person. Commonwealth stated that customer notice should be sufficient and that requiring customer consent could jeopardize a member's ability to protect investors. FINRA believes that disclosures to a trusted contact person pursuant to proposed Rules 2165 or 4512(a)(1)(F) would be consistent with Regulation S–P.

SIFMA requested guidance on how the disclosure requirements in proposed Supplementary Material .06 to Rule 4512 could be met (*e.g.,* in an account agreement, privacy policy or other form). The proposed rule change does not mandate any particular form of written disclosure. A member has flexibility in choosing which document should include the required disclosure (*e.g.,* in an account application or another customer form) or whether to provide the disclosure in a separate document.

Information That May Be Disclosed to a Trusted Contact Person

Under the *Notice* 15–37 Proposal, pursuant to proposed Supplementary Material .06 to Rule 4512, a member may disclose to the trusted contact person information about the customer's account to confirm the specifics of the customer's current contact information, health status, and the identity of any legal guardian, executor, trustee or holder of a power of attorney, and as otherwise permitted by proposed Rule 2165. In the *Notice* 15–37 Proposal, FINRA requested comment on whether the types of information that may be disclosed to the trusted contact person under Rule 4512 should be modified.

Some commenters supported addressing in Rule 4512 the information that may be shared by a member with a trusted contact person.[77] SIFMA further supported removing any restrictions on the information that may be discussed with a trusted contact person. IRI commented that members should have discretion to disclose to and discuss with the trusted contact person any information relevant to an investment under proposed Rule 2165. CAI supported a more general ''catch all'' category for information that may be disclosed to and discussed with a trusted contact person.

ICI suggested revising the proposed Supplementary Material to Rule 4512 to provide that a member is prohibited from contacting a trusted contact person except as permitted by Rule 2165 to protect the customer's privacy. GWFS commented that a member does not request or receive health information from customers and, if the member should have health information, it would be responsible for additional regulatory requirements.

FINRA has proposed retaining the approach in the *Notice* 15–37 Proposal regarding the types of information that may be disclosed to the trusted contact person under Rule 4512, with the addition of information to address possible financial exploitation. FINRA has sought to identify reasonable categories of information that may be discussed with a trusted contact person, including information that will assist a member in administering the customer's account. Given privacy considerations, FINRA does not propose to give the member absolute latitude to discuss any information with trusted contact persons. With respect to health status, while members generally do not receive health information from customers, FINRA believes it is reasonable to permit members to reach out to the trusted contact person when they are concerned about a customer's health (*e.g.,* when a customer who is known to be frail or ill has not responded to multiple telephone calls over a period of time). FINRA also believes that members should be allowed to contact the trusted contact person to address possible financial exploitation of the customer (*e.g.,* when the member is concerned that the customer is being financially exploited but the member has not yet decided to place a temporary hold on a particular disbursement).

Some commenters suggested including in the list of information that

[74] *See* IJEC, GSU and Alzheimer's Assoc.

[75] *See* Cowan and NAELA.

[76] *See* CAI, Lincoln and SIFMA.

[77] *See* FSR, Lincoln, BDA and SIFMA.

may be disclosed to the trusted contact person the reason for any temporary hold, as well as details about the disbursement request.[78] Proposed Supplementary Material to Rule 4512 contemplates a member contacting the trusted contact person as otherwise permitted by Rule 2165. FINRA would consider discussing the temporary hold, including the rationale for the hold, with the trusted contact person to be covered by Supplementary Material to Rule 4512.

Two commenters stated that FINRA should explicitly permit members to share information concerning an account with the financial institution that is the receiving party in an ACATS transfer.[79] SIFMA also stated that such information sharing should be permitted even if a temporary hold is not placed on a disbursement pursuant to proposed Rule 2165. As noted above, FINRA would consider disbursements to include processing of an ACATS transfer but a member would need to have a reasonable belief of financial exploitation in order to place a temporary hold on an ACATS transfer request pursuant to proposed Rule 2165. Furthermore, FINRA believes that the reasonableness of a member discussing a questionable ACATS transfer with the financial institution that is to receive the transferring assets would depend on the facts and circumstances. Members considering whether to discuss an ACATS transfer with another financial institution may wish to consider the availability of the Regulation S–P exception for allowing sharing of information in order to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability.[80] FINRA would consider providing guidance, as appropriate, if specific questions regarding the application of the proposed rule change to ACATS transfers arise.

Application of Rule 4512 Requirements to Existing Accounts

Consistent with the current requirements of Rule 4512, a member would not need to attempt to obtain the name of and contact information for a trusted contact person for existing accounts until such time as the member updates the information for the account either in the course of the member's routine and customary business or as otherwise required by applicable laws or rules.

Some commenters stated that members should be required to request the name and contact information for a trusted contact person for existing accounts not later than 12 months after the adoption of the proposed rule change.[81] NASAA supported requiring members to obtain the name and contact information for a trusted contact person from customers and to update the information on a regular basis in the manner in which members collect and maintain suitability information. CFA Institute supported requiring members to update trusted contact person-related information during periodic reviews and when a customer's situation changes. Commonwealth stated that members should be able to rely on existing procedures for updating accounts pursuant to Rule 17a–3 under the Exchange Act. Commonwealth further stated that it should be sufficient to indicate that no trusted contact person-related information has been provided to the member and that the customer should contact the member if he or she would like to provide the name of and contact information for a trusted contact person.

With respect to an account that was opened pursuant to a prior FINRA rule, FINRA Rule 4512(b) requires members to update the information for such an account in compliance with FINRA Rule 4512 whenever they update the account information in the course of their routine and customary business, or as required by other applicable laws or rules. With respect to any account that was opened pursuant to a prior FINRA rule, a member shall provide the required disclosure in writing, which may be electronic, when updating the information for the account pursuant to Rule 4512(b) either in the course of the member's routine and customary business or as otherwise required by applicable laws or rules. Such an approach promotes greater uniformity and consistency of account record information, while also minimizing burdens to members with respect to updating information for existing accounts. Applying the same standard to trusted contact person information would ensure that members use reasonable efforts to obtain such information for existing accounts in the course of their routine business, while not imposing undue burdens on firms to immediately contact all existing accountholders.

Immediate Family Member

Under the *Notice* 15–37 Proposal, if the trusted contact person is not available or the member reasonably believes that the trusted contact person has engaged, is engaged or will engage in the financial exploitation of the specified adult, the member would have been required to contact an immediate family member, unless the member reasonably believes that the immediate family member has engaged, is engaged or will engage in the financial exploitation of the specified adult.

Some commenters raised privacy concerns regarding disclosing information to an immediate family member. GSU commented that an immediate family member who has not been designated as a customer's trusted contact person should be contacted only for the purpose of gathering information about the identity of a guardian, executor, trustee or holder of a power of attorney so as to ensure that the customer's personal and private information is not disclosed to persons that the customer does not wish to receive the information. ICI suggested that contacting an immediate family member or other person about an account without the customer's explicit approval would not be permitted by Regulation S–P. NASAA stated that contacting immediate family members implicates privacy concerns and may exacerbate the problems that the proposed rule change seeks to address. IRI supported giving a member discretion not to contact an immediate family member where the member may have reason to believe that the customer would not want the family member contacted. Some commenters suggested including ''immediate family members'' in the proposed Supplementary Material .06 to Rule 4512 to make it clear that such persons may be contacted under proposed Rule 2165.[82]

Some commenters expressed operational concerns with contacting an immediate family member. Alzheimer's Assoc. commented that it is unclear how a member would identify an immediate family member to contact in the event that the trusted contact person was unavailable. FSR suggested an alternative approach that where time is of the essence, a member may in its discretion contact an immediate family member in instances where the trusted contact person is not immediately available.

Some commenters supported looking beyond immediate family members to provide members with discretion regarding whom to contact about a customer's account.[83] FSI suggested permitting members to also contact an individual who shares a trusted

[78] *See* Commonwealth and Alzheimer's Assoc.

[79] *See* FSR and SIFMA.

[80] *See* 17 CFR 248.15(a)(2)(ii).

[81] *See* Cowan and Alzheimer's Assoc.

[82] *See* CAI and Wells Fargo.

[83] *See* Lincoln and Wells Fargo.

relationship with a customer (*e.g.,* an attorney or an accountant).

Under the *Notice* 15–37 Proposal, the term ''immediate family member'' was defined to include a spouse, child, grandchild, parent, brother or sister, mother-in-law or father-in-law, brother-in-law or sister-in-law, and son-in-law or daughter-in-law, each of whom must be age 18 or older. SIFMA suggested revising the definition to include a customer's niece or nephew.

Due to the privacy and operational challenges noted by commenters, FINRA has proposed removing the requirements in the *Notice* 15–37 Proposal with respect to notifying an immediate family member when a temporary hold is placed. While a customer may name an immediate family member as his or her trusted contact person, the proposed rule change would not require that a member notify an immediate family member who is not authorized to transact business on the customer's account or who has not been named a trusted contact person. However, the proposed rule change would not preclude a member from contacting an immediate family member or any other person if the member has customer consent to do so. Moreover, contacting such persons may be useful to members in administering customer accounts.

Notification Period

Under the *Notice* 15–37 Proposal, proposed Rule 2165 would have required the member to provide notification of the hold and the reason for the hold to all parties authorized to transact business on the account and, if available, the trusted contact person, no later than two business days after placing the hold. In the *Notice* 15–37 Proposal, FINRA requested comment on whether the two-business-day period for notifying the appropriate parties under proposed Rule 2165 is appropriate. If not, FINRA requested comment on what circumstances may warrant a shorter or longer period.

Commenters suggested extending the period from two business days to four business days,[84] five business days [85] and seven business days.[86] Commonwealth commented that the two-business-day period may be insufficient. Commonwealth suggested that if a member is unable to reach the trusted contact person or an immediate family member within two business days, then the member should have up to ten business days for notification. Alzheimer's Assoc. suggested reducing the period from two business days to 24 hours.

Other commenters suggested not requiring notification within a specific time period. Wells Fargo suggested requiring notification ''promptly'' or ''as is reasonable under the circumstances.'' Because the two-business-day period may be insufficient, SIFMA suggested requiring ''reasonable efforts'' to notify the appropriate parties without imposing a specific time period.

Given the need for urgency in dealing with financial exploitation, FINRA has proposed retaining the requirement to notify all parties authorized to transact business on an account not later than two business days after the hold is placed. To ease members' administrative and operational burdens, FINRA has proposed eliminating the requirement to contact an immediate family member under proposed Rule 2165.

Commenters suggested clarifying when the time period would begin and end.[87] Many FINRA rules require calculating business days. For purposes of calculating the two-business-day period within which a member must provide notification of the temporary hold to parties authorized to transact business on the account, and consistent with the approach taken in FINRA Rule 9138(b) (Computation of Time), the day when the member places the temporary hold should not be included, so the two-business-day period would begin to run on the next business day and would thus run until the end of the second business day thereafter. For example, assuming no intermediate federal holiday, if a member placed a temporary hold on a Monday, the two-business-day period would run until the end of Wednesday. If a member placed a hold on a Friday, then the two-business-day period would run until the end of the following Tuesday, again assuming no intermediate federal holiday. FINRA intends this same approach to be used for the calculation of the period for the temporary hold under proposed Rule 2165.

Internal Review

Under the *Notice* 15–37 Proposal, if a member places a temporary hold, proposed Rule 2165 would require the member to immediately initiate an internal review of the facts and circumstances that caused the qualified person to reasonably believe that financial exploitation of the specified adult has occurred, is occurring, has been attempted or will be attempted.

PIRC supported requiring members to immediately initiate an internal review. SIFMA commented that the requirement to immediately initiate an internal review is unnecessarily duplicative because the proposed rule change already tacitly requires members to initiate an internal review prior to placing the temporary hold. CAI suggested requiring members to initiate an internal review as soon as reasonably practicable. FINRA intends the requirement to immediately initiate an internal review to signify that a member should not delay in reviewing the appropriateness of the temporary hold and determining appropriate next steps. Moreover, because a member's internal review is part of determining appropriate next steps once a hold has been placed, FINRA does not believe that the requirement is unnecessarily duplicative of any other requirements in the proposed rule change.

FSR requested that FINRA clarify the scope of the internal review requirement, including what factors should be considered and the nature of the inquiry. FINRA believes that the appropriate internal review will depend on the facts and circumstances of the situation. Members have discretion in conducting a reasonable internal review under proposed Rule 2165.

Policies and Procedures

Proposed Rule 2165 would require a member that anticipates using a temporary hold in appropriate circumstances to establish and maintain written supervisory procedures reasonably designed to achieve compliance with the Rule, including, but not limited to, procedures on the identification, escalation and reporting of matters related to financial exploitation of specified adults. In the *Notice* 15–37 Proposal, FINRA requested comment on whether to mandate specific procedures for escalating matters related to financial exploitation.

Lincoln commented that FINRA should not prescribe or mandate any specific procedures for escalating matters. On the other hand, Miami Investor Rights Clinic supported requiring all members to establish written supervisory procedures for all registered persons related to the identification and escalation of matters involving financial exploitation.

FINRA has proposed retaining the approach in the *Notice* 15–37 Proposal requiring policies and procedures reasonably designed to achieve compliance with proposed Rule 2165. FINRA is committed to protecting seniors and other vulnerable adults and

[84] *See* CAI.

[85] *See* FSR and FSI.

[86] *See* IRI.

[87] *See* CAI and FSR.

believes that the proposed rule change would assist members in addressing financial exploitation of such individuals. FINRA recognizes however that placing holds on disbursements, even on a temporary basis, could have negative implications for the customer's financial situation and the member-customer relationship. In light of the complexities surrounding financial exploitation and to help protect against potential misapplication of the proposed rule, FINRA believes that members must have written supervisory procedures reasonably designed to achieve compliance with proposed Rule 2165. Such procedures would help to ensure that members give careful consideration to their responsibilities in identifying and escalating matters related to financial exploitation of specified adults and that there is a consistent approach across the member's organization.

Training

Under the *Notice* 15–37 Proposal, the proposal would also require members to develop and document training policies or programs reasonably designed to ensure that registered persons comply with the requirements of the Rule. Some commenters supported requiring broad training of the members' staffs regarding the risks of financial exploitation.[88] Miami Investor Rights Clinic supported requiring members to establish training policies and programs for all registered persons.

GSU suggested that FINRA oversee training policies or programs related to proposed Rule 2165, including the creation of continuing education requirements for registered persons and web-based training for all qualified persons. Commonwealth supported FINRA providing guidance on appropriate training of registered persons related to proposed Rule 2165, including FINRA-created training modules.

FINRA has proposed retaining the approach in the *Notice* 15–37 Proposal to require members to develop and document training policies or programs. FINRA has modified the requirement to mandate training for associated persons—not just registered persons. Because the proposed rule change permits an associated person of the member who serves in a supervisory, compliance or legal capacity for the member to place, terminate or extend a temporary hold on behalf of the member, FINRA believes that it is appropriate to require members to develop and document training policies or programs reasonably designed to ensure that associated persons—not just registered persons—comply with the proposed rule.

FINRA believes that the requirement will further strengthen compliance by members and associated persons that anticipate placing holds on disbursements of funds or securities consistent with the requirements of the Rule. The proposed rule change provides members with reasonable discretion in determining how best to structure such training policies or programs. FINRA has developed material for the Continuing Education Regulatory Element Program that addresses the financial exploitation of senior investors. FINRA will consider whether to develop additional continuing education content specifically addressing financial exploitation of seniors and providing additional guidance to members, as appropriate.

Reporting

Some commenters supported revising the proposal to require members to report financial exploitation to local adult protective services and law enforcement.[89] Some commenters also supported revising the proposal to require members to report financial exploitation to FINRA.[90] SIFMA also supported providing members with explicit permission to share records with local adult protective services and law enforcement.

CAI commented that FINRA needs to provide a more definitive mechanism under which members may refer a matter to the proper agency or governmental body for handling. NAPSA supported requiring members to report financial exploitation to adult protective services under the Regulation S–P exceptions for allowing sharing of information in order to prevent actual or potential fraud and to comply with authorized civil investigations. FSR suggested that the proposed rule change should permit members to petition a government agency for a determination concerning a proposed disbursement, which would allow the applicable jurisdiction's adult protective services to intervene. FSI suggested that requiring the reporting of potential financial exploitation or exposing members to potential civil liability will lead to members reporting even the slightest suspicions to regulators, thereby over-taxing regulatory resources.

The proposed rule change does not require that members report a reasonable belief of financial exploitation to a state or local authority. Some states mandate such reporting by financial institutions, including broker-dealers. Given the varying and evolving reporting requirements under state law, FINRA believes that states are well positioned to determine whether a broker-dealer or any other entity has satisfied its reporting requirements under state law. FINRA would expect members to comply with all applicable state requirements, including reporting requirements.[91]

Alzheimer's Assoc. supported requiring members to document any referral to an external agency, as well as the final outcome of any holds placed. Because the proposed rule change would not require referring matters to an external agency, proposed Rule 2165 does not require members to document any such referrals. However, FINRA would expect members to comply with all applicable state recordkeeping requirements.

Costs

In the *Notice* 15–37 Proposal, FINRA requested comment on the costs that may result from the proposed rules. Commonwealth stated that it will need to make changes to existing account profile systems that will require development time, at an estimated cost of approximately $40,000. Wells Fargo stated that it will need to incorporate the trusted contact person into the account opening process and make other necessary system updates, at an estimated cost of approximately $1.25 million.

Other commenters indicated that the proposed rule change will result in costs to members but did not attempt to quantify such costs. GWFS commented that in order to capture, retain and periodically update trusted contact person information, systems changes will be required resulting in additional costs to the member. FSR suggested that the proposed recordkeeping requirement will result in significant costs for members.

FSR suggested that FINRA's economic impact assessment present findings that show evidence that a customer designating a trusted contact person is, or is likely to be, an effective mitigant

[88] *See* NAELA and AARP.

[89] *See* NAELA, PIABA, Miami Investor Rights Clinic, NAIFA, PIRC, Alzheimer's Assoc., AARP, NASAA and SIFMA.

[90] *See* PIRC and NASAA.

[91] *See* Interagency Guidance clarifying that reporting suspected financial abuse to appropriate local, state, or federal agencies does not, in general, violate the privacy provisions of the Gramm-Leach-Bliley Act or its implementing regulations, including Regulation S–P.

against the financial exploitation the proposed rule change is designed to address.

PIRC suggested that FINRA seek more information on the logistics and costs of expanding the proposed rule change to apply to all investors or to otherwise expand the definition of ''specified adults.''

As discussed in greater detail in Item 4 of this filing, FINRA does not believe that the proposed rule change will impose undue operational costs on members. While FINRA recognizes that there will be some operational costs to members in complying with the proposed trusted contact person requirement, FINRA has lessened the cost of compliance by not requiring members to notify the trusted contact person of his or her designation as such. Furthermore, the proposed rule change would permit a member to deliver the disclosure and notification required by Rule 4512 or Rule 2165 to trusted contact persons in paper or electronic form thereby giving the member alternative methods of complying with the requirements.

FIBA suggested that the reasonable costs associated with due diligence and investigatory processes, including responding to inquiries from the trusted contact person, immediate family members and other parties, should be borne by the customer and chargeable against the relevant account(s). FINRA would closely examine the reasonableness of a member charging a customer for costs associated with placing a temporary hold on the customer's account.

Additional Privacy Considerations

FIBA commented that the disclosure of confidential information pursuant to the proposed rule change may run afoul of U.S. and foreign privacy laws. The proposed rule change addresses Regulation S–P requirements. Members will need to separately consider any applicable non-U.S. privacy requirements in determining whether to place temporary holds consistent with the requirements of proposed Rule 2165.

CAI questioned whether the Regulation S–P exception for disclosure of information pursuant to a law or rule would be available if proposed Rule 2165 permits, but does not require, a temporary hold. FINRA believes that a member disclosing information pursuant to proposed Rule 2165 would be consistent with the Regulation S–P exception for disclosures to comply with federal, state, or local laws, rules and other applicable legal requirements.

Additional Suggestions for Clarification or Guidance

CAI requested guidance on the status of funds during the time of the temporary hold and, in particular, on the obligations of different parties related to the temporary hold on disbursements of funds related to a variable annuity contract withdrawal or surrender, or how to address such funds when the member is not authorized to hold customer funds. Proposed Rule 2165 applies to disbursements of funds or securities out of a customer account and does not apply to redemptions of securities or other transactions. As such, FINRA does not anticipate a member that is not authorized to hold funds being required to hold funds under the proposed rule change. Rather, while the temporary hold on a disbursement is in effect, the funds or securities would remain in a customer's account and would not be released.

GWFS requested clarification as to the application of the proposed rule to members primarily involved with the retirement plan business, such as where a retirement plan sponsor's relationship is with a financial intermediary unaffiliated with the member but the member provides recordkeeping services. GWFS questioned which broker-dealer is ''responsible for rule compliance.''

More than one financial institution may be providing services in some arrangements and business models (*e.g.,* retirement plans or introducing and clearing firm arrangements). In such arrangements, the financial institution that has a reasonable belief that financial exploitation is occurring may not hold the assets that are subject to the disbursement request. For example, with respect to introducing and clearing firm arrangements, an introducing firm may make the determination that placing a temporary hold pursuant to the proposed rule change is appropriate. The clearing firm may then place the temporary hold at the direction of and in reasonable reliance on the information provided by the introducing firm. FINRA recognizes that members making a determination or recommendation to place a hold on a disbursement may not be in the position to place the actual hold on the funds or securities.

Coordination With Other Regulators

As noted above, NASAA has separately proposed model legislation relating to financial exploitation of seniors and other vulnerable adults. NASAA stated that it hopes that the final outcomes of the FINRA proposal and the NASAA model are complementary. Some commenters recommended consistency between the FINRA proposal and NASAA model as being in the best interests of both investors and financial institutions.[92] Other commenters stated that FINRA should coordinate with NASAA and state regulators to develop a cohesive framework.[93]

While the proposed rule change and NASAA model are not identical, FINRA and NASAA have worked together to achieve consistency where possible and appropriate. Both the proposed rule change and NASAA model would apply to accounts of natural persons age 65 and older and would permit temporary holds of up to 25 business days, including the initial and subsequent periods. Proposed Rule 2165 also would incorporate the concept of a temporary hold being terminated or extended by a state regulator or agency or court of competent jurisdiction.

Implementation Period

Some commenters requested that if the proposed rule change is approved, FINRA allow at least 12 months for members to implement the requirements so as to provide adequate time to make updates to members' systems and written supervisory procedures.[94] If the proposed rule change is approved, FINRA will consider the need for members to make necessary changes to their systems, forms, and supervisory procedures in establishing an implementation date for the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing,

[92] *See* ICI, Lincoln, AARP and FSI.

[93] *See* FSR, IRI, BDA and SIFMA.

[94] *See* Commonwealth, CAI and Wells Fargo.

including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2016–039 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2016–039. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2016–039 and should be submitted on or before November 28, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[95]

Brent J. Fields,

Secretary.

[FR Doc. 2016–26797 Filed 11–4–16; 8:45 am]

BILLING CODE 8011–01–P

[95] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 9785]

Culturally Significant Objects Imported for Exhibition Determinations: ''Art and Nature in the Middle Ages'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Art and Nature in the Middle Ages,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Dallas Museum of Art, Dallas, Texas, from on or about December 4, 2016, until on or about March 19, 2017, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: October 31, 2016.

Mark Taplin,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2016–26868 Filed 11–4–16; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 9784]

Culturally Significant Objects Imported for Exhibition Determinations: ''Marisa Merz: The Sky Is a Great Space'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Marisa Merz: The Sky Is a Great Space,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, New York, from on or about January 24, 2017, until on or about May 7, 2017, at the Hammer Museum, Los Angeles, California, from on or about June 4, 2017, until on or about August 20, 2017, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: October 31, 2016.

Mark Taplin,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2016–26867 Filed 11–4–16; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket no. FHWA–2016–0024]

Project Management Plan Guidance

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for comments.

SUMMARY: This notice requests comments on draft Project Management Plan Guidance outlining the purpose and contents of Project Management Plans, when such plans are required, and the preferred form and procedure for submission of these Project

Management Plans to FHWA. The proposed Project Management Plan Guidance clarifies prior guidance on the Project Management Plan process, including when to prepare plan updates.

DATES: Comments must be received on or before December 7, 2016.

ADDRESSES: To ensure that you do not duplicate your docket submissions, please submit all comments by only one of the following means:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE., W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE., between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.
- *Instructions:* You must include the agency name and docket number at the beginning of your comments. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: For questions about this notice contact Mr. James Sinnette, FHWA Office of Infrastructure, (202) 366–1561, Federal Highway Administration, 1200 New Jersey Ave. SE., Washington, DC 20590, or via email at *james.sinnette@dot.gov.* For legal questions, please contact Ms. Jennifer Mayo, Assistant Chief Counsel for Program Legal Services, FHWA Office of the Chief Counsel, (202) 366–1523, Federal Highway Administration, 1200 New Jersey Ave. SE., Washington, DC 20590–0001, or via email at *jennifer.mayo@dot.gov.* Business hours for the FHWA are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

A copy of the proposed Project Management Plan Guidance is available for download and public inspection under the docket number noted above at the Federal eRulemaking portal at: *http://www.regulations.gov.* You may submit or retrieve comments online through the Federal eRulemaking portal at: *http://www.regulations.gov.* The Web site is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded from Office of the Federal Register's home page at: *http://www.archives.gov/federal_register* and the Government Publishing Office's Web page at: *https://www.gpo.gov/fdsys/.* Late comments will be considered to the extent practicable.

Background

Major projects are defined in 23 U.S.C. 106(h) as projects receiving Federal financial assistance with an estimated total cost of $500,000,000, or other projects as may be identified by the Secretary. Major projects are typically large, complex projects designed to address major highway needs and require the investment of significant financial resources. The preparation of a Project Management Plan, as required by 23 U.S.C. 106(h), ensures successful project delivery and the maintenance of public trust, support, and confidence throughout the life of the project. Project Management Plans clearly define the responsibilities of the agency leadership and management team. Further, such plans document the procedures and processes to provide timely information to project decision makers.

When finalized, the proposed Project Management Plan Guidance will replace the existing January 2009 Project Management Plan Guidance. Current guidance is over 7 years old and in need of clarification. This new, proposed guidance is less prescriptive, in light of an increased understanding of Project Management Plans by FHWA and Project Managers. Further, a recent DOT Office of Inspector General audit expressed the need for more clarity in the guidance on when Project Management Plan updates should be prepared.[1] Finally, while current guidance includes best practices for managing major projects, these practices will not be included in the new guidance. Rather, best management practices will be developed as a separate resource to be shared with project sponsors and FHWA staff.

Comments on the proposed Project Management Plan Guidance are welcome from any interested party, including Federal, State, and local agencies; industry groups; and the general public. A copy of the proposed Project Management Plan Guidance is available for download and public inspection under the docket number noted above at the Federal eRulemaking portal at: *http://www.regulations.gov.* The FHWA requests that commenters cite the page number of the Guidance for which each specific comment to the docket is concerned, to help make the FHWA's docket comment review process more efficient. The FHWA will consider all comments received during the comment period prior to finalizing the Project Management Plan Guidance.

Authority: 23 U.S.C. 106(h); 49 CFR 1.85.

Issued on: October 31, 2016.

Gregory G. Nadeau,

FHWA Administrator.

[FR Doc. 2016–26815 Filed 11–4–16; 8:45 am]

BILLING CODE 4910–22–P

[1] FHWA Met Basic Requirements but can Strengthen Guidance and Controls for Financial and Project Management Plans, FHWA, Report No. ST–2015–018 (Jan. 2015), *available at https://www.oig.dot.gov/library-item/32336.*

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on the Interstate 64/High Rise Bridge Corridor Study in Chesapeake, Virginia

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA

SUMMARY: This notice announces actions taken by the FHWA that are final within the meaning of 23 U.S.C. 139(*l*)(1). The actions relate to the widening of Interstate 64 for approximately eight miles between the I–464 Interchange and the I–664/I–264 Interchange in the City of Chesapeake, Virginia. The widening project includes the replacement of the High Rise Bridge over the Elizabeth River. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the project will be barred unless the claim is filed on or before April 6, 2017. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For FHWA: Mr. Mack Frost, Planning and Environmental Specialist, FHWA Virginia Division, 400 North 8th Street, Richmond, Virginia, 23219; telephone: (804) 775–3352; email: *Mack.frost@dot.gov.* The FHWA Virginia Division Office's normal business hours are 8:00 a.m. to 4:30 p.m. (Eastern Time). For the Virginia Department of Transportation: Mr. Scott Smizik, 1401 East Broad Street, Richmond, Virginia 23219; email: *Scott.Smizik@vdot.virginia.gov;*

telephone: (804) 371–4082. The Virginia Department of Transportation's normal business hours are 7:00 a.m. to 4:00 p.m.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FHWA has taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and approvals for the following project in the State of Virginia: The widening of Interstate 64 for approximately eight miles between the I–464 Interchange and I–664/I–264 in the City of Chesapeake, Virginia. The project would involve constructing two additional lanes of capacity in each direction including the construction of a new bridge and replacement of the existing High Rise Bridge. The actions taken by FHWA, and the laws under which such actions were taken, are described in the Environmental Assessment (EA), the Request for the Finding of No Significant Impact (FONSI) that included a Revised EA, and the FONSI. The EA was signed on October 3, 2014. The FONSI was issued on August 22, 2016. The EA, Request for the FONSI, and FONSI can be viewed on the project's internet site at *http://virginiadot.org/projects/hamptonroads/i-64_southside__high_rise_bridge_phased_construction.asp.*

These documents and other project records are also available by contacting FHWA or the Virginia Department of Transportation at the phone numbers and addresses listed above. This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act (FAHA) [23 U.S.C. 109 and 23 U.S.C. 128].

2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303; 23 U.S.C. 138].

4. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*].

5. *Social and Economic:* Farmland Protection Policy Act [7 U.S.C. 4201–4209].

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1).

Dated: November 1, 2016.

John Simkins,

Planning and Environment Team Leader, Richmond, Virginia.

[FR Doc. 2016–26812 Filed 11–4–16; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2016–0103; Notice 1]

Daimler Trucks North America, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: Daimler Trucks North America (DTNA), has determined that certain model year (MY) 2016–2017 Freightliner and Western Star trucks do not fully comply with Table 2 of Federal Motor Vehicle Safety Standard (FMVSS) No. 101, *Controls and Displays.* DTNA filed a report dated September 22, 2016, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* DTNA also petitioned NHTSA on September 22, 2016, under 49 CFR part 556 for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety.

DATES: The closing date for comments on the petition is December 7, 2016.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to 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 comments by hand to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) Web site at *https://www.regulations.gov/.* Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *https://www.regulations.gov* by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000, (65 FR 19477–78).

SUPPLEMENTARY INFORMATION:

I. *Overview:* Pursuant to 49 U.S.C. 30118(d) and 30120(h), 49 CFR part 556, DTNA submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of DTNA's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

II. *Vehicles Involved:* Affected are approximately 36,959 MY 2016–2017 versions of the following trucks, manufactured between September 28, 2015 and July 30, 2016:

- Freightliner Cascadia
- Freightliner 122SD
- Freightliner Coronado

- Western Star 5700

III. *Noncompliance:* DTNA explains that the noncompliance is that the Low Brake Air Pressure telltale for air brake systems displays the word ''BRAKE'' and a red International Standards Organization (ISO) symbol for brake malfunction when a low air brake pressure condition exists, rather than the words ''BRAKE AIR,'' as specified in Table 2 of FMVSS No. 101. DTNA states that the telltale is accompanied by an audible alert and low pressure gauge reading.

IV. *Rule Text:* Paragraph S5 of FMVSS No. 101 provides: ''Each passenger car, multipurpose passenger vehicle, truck and bus that is fitted with a control, a telltale, or an indicator listed in Table 1 or Table 2 must meet the requirements of this standard for the location, identification, color, and illumination of that control, telltale or indicator.''

Paragraph S5.2.1 of FMVSS No. 101 provides, in pertinent part: ''. . . each control, telltale and indicator that is listed in column 1 and 2 of Table 1 or Table 2 must be identified by the symbol specified for it in column 2 or the word or abbreviation specified for it in column 3 of Table 1 or Table 2.''

Table 2 appears as follows:

BILLING CODE 4910–59–P

Table 2
Identifiers for
Controls, Telltales and Indicators with
No Color or Illumination Requirements

Column 1 ITEM	Column 2 SYMBOL	Column 3 WORD(S) OR ABBREVIATION
Hand Throttle Control	—	Throttle
Engine Start Control	—	Engine Start[1]
Manual Choke Control	—	Choke
Odometer	—	Kilometers or km, if kilometers are shown. Otherwise, no identifier is required.[2]
Horn		Horn
Master Lighting Switch	[3]	Lights
Headlamps and Taillamps Control	—	—[4,5]
Low Brake Air Pressure Telltale (for vehicles subject to FMVSS 121)	—	Brake Air
Seat Belt Unfastened Telltale		Fasten Belts or Fasten Seat Belts

Notes:

1. Use when engine control is separate from the key locking system.
2. Any combination of upper- or lowercase letters may be used.
3. Framed areas may be filled.
4. If a line appears in Column 2 and Column 3, the Control, Telltale or Indicator is required to be identified, however the form of the identification is the manufacturer's option.
5. Separate identification not required if function is combined with Master Lighting Switch.

BILLING CODE 4910–59–C

V. *Summary of DTNA's Petition:* DTNA described the subject noncompliance and stated its belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, DTNA submitted the following reasoning:

(a) DTNA notes that the purpose of the low brake air pressure telltale is to alert the driver to a low air condition, consistent with the requirements of FMVSS No. 121, S5.1.5 (warning signal). The word ''BRAKE'' instead of ''BRAKE AIR,'' together with the audible alert that occurs in the subject vehicles would still alert the driver to an issue with the brake system. Once alerted, the driver can check the actual air pressure by reading the primary and secondary air gauges and seeing the contrasting color on the gauges indicating low pressure.

(b) NHTSA stated in a 2005 FMVSS No. 101 rulemaking that the reason for including vehicles over 10,000 pounds in the requirements of FMVSS No. 101 is that there is a need for drivers of heavier vehicles to see and identify their displays, just as there is for drivers of lighter vehicles. See 70 FR 48295, 48298 (Aug. 17, 2005). The telltale in the subject vehicles saying ''BRAKE'' would allow the driver to see and identify the improper functioning system as was the intent of the rule, thus serving the purpose of the FMVSS No. 101 requirement.

(c) There are two scenarios when a low brake air pressure condition would exist: A parked vehicle and a moving vehicle. Each of these are discussed separately below; in each scenario, there is ample warning provided to the driver of low brake air pressure.

a. Parked Vehicle

The driver of an air-braked vehicle must ensure that the vehicle has enough brake air pressure to operate safely. At startup, the vehicle will likely be in a low air condition. When in a low air condition the following warnings would occur, conditioning the driver over time as to the purpose of the telltale and audible alerts and under what conditions they are activated.

- Red contrasting color of the telltale saying ''BRAKE''.
- Red contrasting color of the ISO symbol for brake malfunction.
- Audible alert to the driver as long as the vehicle has low air.
- Air gauges for the primary and secondary air tanks clearly showing the air pressure in the system.
- Red contrasting color on the air gauges indicating when the pressure is low.
- Difficulty/inability of releasing the parking brakes with low air.
- Reduced drivability if the driver attempts to drive with the parking brakes applied.

b. Moving Vehicle

If a low brake air pressure situation occurs while driving, the function of the service brakes may be reduced or lost and, eventually if the pressure gets low enough, the parking brakes will engage. The driver must pull to the side of the road and apply the parking brakes as soon as possible. A loss of brake air pressure while driving represents a malfunctioning brake system and requires immediate action from the driver. Drivers recognize that a telltale illuminated in red represents a malfunction which needs to be remedied.

The following warning would occur if a low air condition occurred while driving.

- Red contrasting color of the telltale saying ''BRAKE''.
- Red contrasting color of the ISO symbol for brake malfunction.
- Audible alert to the driver as long as the vehicle has low air.
- Air gauges for the primary and secondary air tanks clearly showing the air pressure in the system.
- Red contrasting color on the air gauges indicating when the pressure is low.

The functionality of both the parking brake system and the service brake system remains unaffected by the ''BRAKE'' telltale used in the subject vehicles.

(d) NHTSA Precedents—DTNA notes that NHTSA has previously granted petitions for decisions of inconsequential noncompliance for similar brake telltale issues, in which the ISO symbol in combination with other available warnings was deemed sufficient to provide the necessary driver warning. See Docket No. NHTSA–2012–0004, 78 FR 69931 (November 21, 2013) (grant of petition for Ford Motor Company) and Docket No. NHTSA–2014–0046, 79 FR 78559 (December 30, 2014) (grant of petition for Chrysler Group, LLC). In both of these instances, the vehicles at issue displayed an ISO symbol for the brake telltale instead of the wording required under FMVSS No. 101. The ISO symbol in combination with other available warnings was deemed sufficient to provide the necessary driver warning. DTNA respectfully suggests that the same is true for the subject vehicles: The ISO symbol, together with other warnings and alerts, are fully sufficient to warn the driver of a low brake air pressure situation.

DTNA concluded by expressing the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject vehicles that DTNA no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after DTNA notified them that the subject noncompliance existed.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8.

Jeffrey M. Giuseppe,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2016–26764 Filed 11–4–16; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2016–0092]

Pipeline Safety: Underground Natural Gas Storage Facility User Fee

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Notice of agency action and request for comment.

SUMMARY: This notice is to advise all underground natural gas storage facility operators of a proposed PHMSA pipeline user fee assessment and rate structure.

FOR FURTHER INFORMATION CONTACT: Roger Little by telephone at 202–366–4569, by fax at 202–366–4566, by email at *Roger.Little@dot.gov,* or by mail at U.S. Department of Transportation, PHMSA, 1200 New Jersey Avenue SE., PHP–2, Washington, DC 20590–0001.

Comments: PHMSA invites interested persons to comment on the underground natural gas storage facility user fee assessment procedures described in this notice by January 6, 2017. Comments should reference Docket No. PHMSA–2016–0092. Comments may be submitted in the following ways:

- *E-Gov Web site: http://www.regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency. Follow the instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System, U.S. Department of Transportation

(DOT), 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590.

Hand Delivery: DOT Docket Management System, Room W12–140, on the ground floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9:00 a.m. and 5:00 p.m. Monday through Friday, except federal holidays.

Instructions: Identify the docket number (PHMSA–2016–0092) at the beginning of your comments. If you submit your comments by mail, submit two copies. If you wish to receive confirmation that PHMSA has received your comments, include a self-addressed stamped postcard. Internet users may submit comments at *http://www.regulations.gov.*

Note: Comments will be posted without changes or edits to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act Statement below for additional information.

Privacy Act Statement

Anyone may search the electronic form of all comments received for any of our dockets. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000 (65 FR 19476), or visit *http://dms.dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA) (Pub. L. 99–272, sec. 7005), codified at Section 60301 of Title 49, United States Code, authorizes the assessment and collection of user fees to fund the pipeline safety activities conducted under Chapter 601 of Title 49. COBRA requires that the Secretary of Transportation establish a schedule of fees for pipeline usage, bearing a reasonable relationship to miles of pipeline, volume-miles, revenues, or an appropriate combination thereof. In particular, the Secretary must take into account the allocation of departmental resources in establishing the schedule.[1] In accordance with COBRA, PHMSA also assesses user fees on operators of liquefied natural gas (LNG) facilities as defined in 49 CFR part 193.

On June 22, 2016, President Obama signed into law the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2016 (Pub. L. 114–183) (PIPES Act of 2016). Section 12 of the PIPES Act of 2016 mandates PHMSA to issue regulations for underground natural gas storage facilities, impose user fees on operators of these facilities, and prescribe procedures to collect those fees. Section 2 of the PIPES Act of 2016 authorizes $8 million per year to be appropriated from those fees for each of fiscal years 2017–2019 for the newly established Underground Natural Gas Storage Facility Safety Account in the Pipeline Safety Fund. PHMSA is prohibited from collecting a user fee unless the expenditure of such fee is provided in advance in an appropriations act. If Congress appropriates funds to this account for fiscal years 2017–2019, PHMSA will collect these fees from the operators of the facilities.

According to the Energy Information Agency (EIA), there are 400 interstate and intrastate underground natural gas storage facilities currently in operation in the United States, with more than four trillion cubic feet of natural gas working capacity. EIA data is collected on form EIA–191, Field Level Storage Data (Annual), and can be accessed from the Related Links section on *http://www.eia.gov/naturalgas/storagecapacity/.* Three hundred twenty-six of those facilities store natural gas in depleted hydrocarbon reservoirs, while 31 facilities store natural gas in salt caverns and 43 store it in depleted aquifers. Of the 400 underground natural gas storage facilities in the U.S., approximately half (197) are interstate facilities.

PHMSA is currently developing an Interim Final Rule (IFR) that will fulfill the requirement in Section 12 of the PIPES Act of 2016 to establish minimum Federal safety standards for underground natural gas storage facilities. The Agency expects this IFR will be issued later this year, but PHMSA has already been preparing to assume regulatory oversight of these facilities. PHMSA is designing a training program for both Federal and State inspectors to enable thorough and effective oversight of all underground storage facilities. Inspection protocols are being developed and will be made publicly available. The protocols will inform all stakeholders of PHMSA's expectations for demonstrating compliance with the minimum safety regulations. PHMSA also plans to deploy Web sites with frequently asked questions and additional guidance on the safe operation of underground natural gas storage facilities.

Once new regulations are in place, PHMSA will directly regulate interstate facilities and will provide grants to State agencies that are or become certified to regulate intrastate facilities. If no State agency is certified in a given state, PHMSA will also directly regulate any intrastate facilities. While the surface piping at underground gas storage facilities is currently subject to the 49 CFR part 192 regulations, extending Federal regulation to the wells and well bore tubing connecting the surface with the underground reservoirs is a regulatory activity not previously conducted by PHMSA that will involve substantial employment of agency resources. This will include, among other things, conducting field inspections of facility operations including reviewing operating, maintenance, integrity and emergency plans and procedures, making compliance determinations and conducting enforcement actions, and accident investigations. PHMSA estimates $2 million of the potential appropriation would fund the preparations mentioned above and direct PHMSA inspection and enforcement. The remaining $6 million of the proposed appropriation would fund grants to State agencies certified by PHMSA to regulate intrastate facilities.

PHMSA invites comments on the following proposed approach to determining the user fee assessment for underground natural gas storage facility operators. This is a tiered approach that is similar to the liquefied natural gas (LNG) plant user fee rate structure, which was modified for FY 2015 billing. The LNG user fee rate structure uses the storage capacity, in barrels of LNG, as the basis for the rate structure. The storage capacity for each operator is determined and operators are placed in tiers. Each tier represents a greater storage capacity and a higher user fee obligation. The storage capacity of an underground natural gas storage facility is referred to as the working gas capacity. PHMSA proposes to use the working gas capacity, in million standard cubic feet, for each operator, and a tiered approach to establish the underground natural gas storage facility user fee structure. The tiered approach places a larger portion of the user fee assessment on operators of larger facilities. PHMSA also considered using the number of active wells per facility as the basis for the tiers as it would also be a reasonable indicator of the expected regulatory efforts needed. PHMSA has not found a publicly available data source for the number of active wells at each facility, but may reassess the user fee rate structure in the future if this or other methods become feasible and are shown to appropriately reflect the allocation of departmental resources to these regulatory activities.

In the spring of 2017, PHMSA will use calendar year 2015 data from the

[1] Pipeline user fee assessments under COBRA were upheld by the U.S. Supreme Court in *Skinner* v. *Mid-America Pipeline Co.,* 490 U.S. 212 (1989).

EIA Web site to develop the underground natural gas storage facility user fee rate structure. When PHMSA promulgates regulations for operators of underground natural gas storage facilities, we plan to include the collection of annual reports to incorporate both the capacity and number of wells per facility in the annual report. If PHMSA were to collect data directly from the operators, PHMSA would discontinue the use of EIA data.

PHMSA proposes the following steps for developing the user fee rate structure. PHMSA will sum the working gas capacity for active fields for each operator. The operator working gas capacity values will be parsed into 10 tiers. The lowest values will be in tier 1 and the highest values in tier 10. The minimum and maximum Working Gas Capacities for each tier will be selected to place an equal number of operators in each tier. Each tier will have a user fee assessment to be paid by each operator in the tier. Based on a preliminary analysis of the EIA data, the tiers and assessment per tier to collect $8,000,000 would be:

Tier	Assessment per operator	Working gas capacity (Mcf) range
1	$12,308	Less than 1,550,000.
2	24,615	More than 1,550,000 and less than 3,500,000.
3	30,769	More than 3,500,000 and less than 6,500,000.
4	36,923	More than 6,500,000 and less than 11,500,000.
5	49,231	More than 11,500,000 and less than 15,500,000.
6	61,538	More than 15,500,000 and less than 22,000,000.
7	73,846	More than 22,000,000 and less than 30,000,000.
8	80,000	More than 30,000,000 and less than 50,000,000.
9	92,308	More than 50,000,000 and less than 85,000,000.
10	142,857	More than 85,000,000.

If less than $8 million is appropriated to the Underground Natural Gas Storage Facility Safety Account, PHMSA will proportionally reduce the assessment for each tier to collect the appropriated amount. Regardless of the appropriated amount, PHMSA expects that 25% would fund PHMSA actions and 75% would fund grants to certified State agencies. PHMSA would continue this user fee assessment in each year funds are provided in advance in an appropriations act and these regulatory activities are carried out.

Issued in Washington, DC, on November 2, 2016, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Acting Associate Administrator for Pipeline Safety.

[FR Doc. 2016–26854 Filed 11–4–16; 8:45 am]

BILLING CODE 4910–60–P

FEDERAL REGISTER

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Part II

Department of the Treasury

Privacy Act of 1974; Systems of Records; Notice

DEPARTMENT OF THE TREASURY

Privacy Act of 1974; Systems of Records

AGENCY: Department of the Treasury.

ACTION: Notice of systems of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department is publishing its Privacy Act systems of records.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974, 5 U.S.C. 552a and the Office of Management and Budget (OMB) Circular No. A–130, the Department has completed a review of its Privacy Act systems of records notices to identify minor changes that will more accurately describe these records. Minor changes throughout the document are editorial in nature and consist principally of changes to system locations, system manager addresses, and revisions to organizational titles. The Treasury-wide notices were last published in their entirety on January 2, 2014, at 79 FR 183.

Four systems of records have been amended or added to the Department's inventory of Privacy Act notices since January 2, 2014, as follows: Treasury .004—Freedom of Information Act/Privacy Act Request Records (September 16, 2016 at 81 FR 63856); Treasury .015—General Information Technology Access Account Records (January 14, 2015 at 80 FR 1988); Treasury .016—Reasonable Accommodations Records (April 28, 2014 at 79 FR 23405 and February 24, 2015 at 80 FR 9853); and, Treasury .017—Correspondence and Contact Information (June 18, 2015 at 80 FR 34963).

Treasury .004—Freedom of Information Act/Privacy Act Request Records has been amended to include the Internal Revenue Service (IRS), to facilitate the disclosure of non- tax information to The Office of Government Information Services (OGIS) within the National Archives and Records Administration in accordance with routine use, ''(10) To the National Archives and Records Administration, Office of Government Information Services (OGIS), to the extent necessary to fulfill its responsibilities in 5 U.S.C. 552(b), to review administrative agency policies, procedures and compliance with the Freedom of Information Act (FOIA), and to facilitate OGIS' offering of mediation services to resolve disputes between making FOIA requests and administrative agencies.''

OGIS serves as a mediator between the various federal agencies that administer the FOIA and the requester. In that capacity, OGIS may come to the IRS to discuss specifics of a request and accordingly that discussion will involve access to the specific non-tax records. Adding IRS to the list of system managers authorizes IRS a discretionary authority to disclose to OGIS purely non-tax, Privacy Act protected information about FOIA requests. It will not authorize disclosure of any tax return or return information. Therefore, OGIS must obtain valid IRC 6103(c) disclosure consent from FOIA requesters before IRS can disclose to OGIS any returns or return information pertaining to any FOIA request.

Treasury .015—General Information Technology Access Account Records has been added to the inventory. The system enables Treasury to maintain: Account information required for approved access to information technology; lists of individuals who are appropriate organizational points of contact; and lists of individuals who are emergency points of contact. In addition, the system will enable Treasury to collect records allowing individuals access to certain meetings and programs where supplemental information is required and, where appropriate, to facilitate collaboration by allowing individuals in the same operational program to share information.

Treasury .016—Reasonable Accommodations Records has been added to the inventory. The purpose of this system of records is to allow Treasury and its bureaus to collect and maintain records on applicants for employment as well as current employees (including contractors and interns) and members of the public who request or receive reasonable accommodations from the Treasury and its Bureaus under the Rehabilitation Act of 1973 and the Americans with Disabilities Act Amendments Act of 2008 (ADAAA). Reasonable accommodations are modifications or adjustments that will allow applicants and employees to apply for a job, perform job duties, and/or enjoy the benefits and privileges of employment. Reasonable accommodations are also made for individuals who seek to participate and/or participate in Treasury programs and activities or attend meetings and events at Treasury facilities. The system will also be used to track processing of requests for reasonable accommodations only to the extent necessary to ensure Treasury-wide compliance with applicable laws and regulations while preserving and maintaining the confidentiality and privacy of all information (*e.g.,* medical information) provided in support of accommodation request.

Treasury .017—Correspondence and Contact Information was added to the inventory. The systems are maintained for the purpose of mailing informational literature or responses to those who request it; maintaining lists of individuals who attend Treasury sponsored events, conferences, work activities, or events in which Treasury or one of its bureaus or offices participated, including meetings or conferences; and for other purposes for which mailing or contact lists may be created.

In addition, as part of this biennial review, the Department has updated three systems of records, adding the Special Inspector General for the Troubled Asset Relief Program (SIGTARP) to Treasury .001—Treasury Payroll and Personnel System and Treasury .010—Telephone Call Detail Records. These changes also include removing SIGTARP from Treasury .003—Treasury Child Care Tuition Assistance Records, because SIGTARP does not collect, maintain, or use child care tuition assistance records.

The systems notices are reprinted in their entirety following the Table of Contents. Systems covered by this notice:

This notice covers all systems of records maintained by the Departmental of the Treasury as of November 7, 2016. The system notices are reprinted in their entirety following the Table of Contents.

Ryan Law,

Acting Deputy Assistant Secretary for Privacy, Transparency, and Records, Department of the Treasury.

Table of Contents

Treasury .001—Treasury Payroll and Personnel System
Treasury .002—Grievance Records
Treasury .003—Treasury Child Care Tuition Assistance Records
Treasury .004—Freedom of Information Act/Privacy Act Request Records
Treasury .005—Public Transportation Incentive Program Records
Treasury .006—Parking and Carpool Program Records
Treasury .007—Personnel Security System
Treasury .009—Treasury Fiscal Service Systems
Treasury .010—Telephone Call Detail Records
Treasury .011—Treasury Safety Incident Management Information System (SIMIS)
Treasury .012—Fiscal Service Public Key Infrastructure
Treasury .013—Department of the Treasury Civil Rights Complaints and Compliance Review Files
Treasury .014—Department of the Treasury SharePoint User Profile Services

Treasury .015—General Information Technology Access Records
Treasury .016—Reasonable Accommodations Records
Treasury .017—Correspondence and Contact Information

TREASURY .001

SYSTEM NAME:

Treasury Personnel and Payroll System—Treasury.

SYSTEM LOCATION:

The Shared Development Center of the Treasury Personnel/Payroll System is located at 1750 Pennsylvania Avenue NW., Suite 1300, Washington, DC 20220. The Treasury Personnel System processing site is located at the Internal Revenue Service Detroit Computing Center, 985 Michigan Avenue, Detroit, MI 48226. The Treasury Payroll processing site is located at the United States Department of Agriculture National Finance Center, 13800 Old Gentilly Road, New Orleans, LA 70129.

The locations at which the system is maintained by all Treasury components and their associated field offices are:

(1) Departmental Offices (DO):

a. 1500 Pennsylvania Ave. NW., Washington, DC 20220.

b. The Office of Inspector General (OIG): 740 15th Street NW., Washington, DC 20220.

c. Special Inspector General for the Troubled Asset Relief Program (SIGTARP), 1801 L Street NW., Washington, DC 20220.

d. Treasury Inspector General for Tax Administration (TIGTA): 1125 15th Street NW., Suite 700A, Washington, DC 20005.

(2) Alcohol and Tobacco Tax and Trade Bureau (TTB): 1310 G St. NW., Washington, DC 20220.

(3) Office of the Comptroller of the Currency (OCC): 400 7th Street SW., Washington, DC 20024.

(4) Bureau of Engraving and Printing (BEP): 14th & C Streets SW., Washington, DC 20228.

(5) Fiscal Service (FS): 401 14th Street SW., Washington, DC 20227.

(6) Internal Revenue Service (IRS): 1111 Constitution Avenue NW., Washington, DC 20224.

(7) United States Mint (MINT): Avery Street Building, 320 Avery Street, Parkersburg, WV, and 801 9th St. NW., Washington DC 20220.

(8) Bureau of Public Debt (BPD): 999–E Street NW., Washington, DC 20239.

(9) Financial Crimes Enforcement Network (FinCEN), Vienna, VA 22183–0039.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Employees, former employees, and applicants for employment, in all Treasury Department bureaus and offices. (2) Employees, former employees, and applicants for employment of Federal agencies for which the Treasury Department is a cross-services provider.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information contained in this system includes such data as:

(1) Employee identification and status data such as name, records that establish an individual's identity, social security number, date of birth, sex, race and national origin designator, awards received, suggestions, work schedule, type of appointment, education, training courses attended, veterans preference, and military service; (2) employment data such as service computation for leave, date probationary period began, date of performance rating, performance contract, and date of within-grade increases; (3) position and pay data such as position identification number, pay plan, step, salary and pay basis, occupational series, organization location, and accounting classification codes; (4) payroll data such as earnings (overtime and night differential), deductions (Federal, state and local taxes, bonds and allotments), and time and attendance data; (5) employee retirement and Thrift Savings Plan data; (6) employment history, and (7) tables of data for editing, reporting and processing personnel and pay actions. These include nature of action codes, civil service authority codes, standard remarks, signature block table, position title table, financial organization table, and salary tables.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 31 U.S.C. 321; Homeland Security Presidential Directive 12 (HSPD–12), and Treasury Directive 80–05, Records and Information Management Program.

PURPOSE(S):

The purposes of the system include, but are not limited to: (1) Maintaining current and historical payroll records that are used to compute and audit pay entitlement; to record history of pay transactions; to record deductions, leave accrued and taken, bonds due and issued, taxes paid; maintaining and distributing Leave and Earnings statements; commence and terminate allotments; answer inquiries and process claims; and (2) maintaining current and historical personnel records and preparing individual administrative transactions relating to education and training; classification; assignment; career development; evaluation; promotion, compensation, separation and retirement; making decisions on the rights, benefits, entitlements and the utilization of individuals; providing a data source for the production of reports, statistical surveys, rosters, documentation, and studies required for the orderly personnel administration within Treasury; (3) maintaining employment history; and (4) perform personnel and payroll functions for Federal agencies for which Treasury is a cross-services provider and to conduct activities necessary to carry-out the official HR line of business for all Federal departments and agencies that are serviced by the National Finance Center (NFC).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Furnish data to the Department of Agriculture, National Finance Center (which provides payroll and personnel processing services for Treasury under a cross-servicing agreement) affecting the conversion of Treasury employee payroll and personnel processing services; the issuance of paychecks to employees and distribution of wages; and the distribution of allotments and deductions to financial and other institutions, some through electronic funds transfer;

(2) Furnish the Internal Revenue Service and other jurisdictions which are authorized to tax employees' compensation with wage and tax information in accordance with a withholding agreement with the Department of the Treasury pursuant to 5 U.S.C. 5516, 5517, and 5520, for the purpose of furnishing employees with IRS Forms W–2 that report such tax distributions;

(3) Provide records to the Office of Personnel Management, Merit Systems Protection Board, Equal Employment Opportunity Commission, and General Accounting Office for the purpose of properly administering Federal personnel systems or other agencies' systems in accordance with applicable laws, Executive Orders, and regulations;

(4) Furnish another Federal agency with information necessary or relevant to effect interagency salary or administrative offset, except that addresses obtained from the Internal Revenue Service shall not be disclosed to other agencies; to furnish a consumer reporting agency information to obtain commercial credit reports; and to furnish a debt collection agency

information for debt collection services. Current mailing addresses acquired from the Internal Revenue Service are routinely released to consumer reporting agencies to obtain credit reports and are arguably relevant to debt collection agencies for collection services;

(5) Disclose information to a Federal, state, local, or foreign agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, that has requested information relevant to or necessary to the requesting agency's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(6) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation or settlement negotiations in response to a subpoena where arguably relevant to a proceeding, or in connection with criminal law proceedings;

(7) Disclose information to foreign governments in accordance with formal or informal international agreements;

(8) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(9) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2, which relates to civil and criminal proceedings;

(10) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(11) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114;

(12) Provide wage and separation information to another agency, such as the Department of Labor or Social Security Administration, as required by law for payroll purposes;

(13) Provide information to a Federal, state, or local agency so that the agency may adjudicate an individual's eligibility for a benefit, such as a state employment compensation board, housing administration agency, and Social Security Administration;

(14) Disclose pertinent information to appropriate Federal, state, local or foreign agencies responsible for investigating or prosecuting the violation of, or for implementing, a statute, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law or regulation;

(15) Disclose information about particular Treasury employees to requesting agencies or non-Federal entities under approved computer matching efforts, limited only to those data elements considered relevant to making a determination of eligibility under particular benefit programs administered by those agencies or entities or by the Department of the Treasury or any constituent unit of the Department, to improve program integrity, and to collect debts and other money owed under those programs (*e.g.,* matching for delinquent loans or other indebtedness to the government);

(16) Disclose to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, the names, social security numbers, home addresses, dates of birth, dates of hire, quarterly earnings, employer identifying information, and State of hire of employees, for the purposes of locating individuals to establish paternity, establishing and modifying orders of child support, identifying sources of income, and for other child support enforcement activities as required by the Personal Responsibility and Work Opportunity Reconciliation Act (Welfare Reform Law, Pub. L. 104–193);

(17) Disclose information to contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Department of the Treasury, when necessary to accomplish an agency Function;

(18) Disclose information to other Federal agencies with whom the Department has entered into a cross servicing agreement that provides for the delivery of automated human resources operations. These operations may include maintaining current and historical payroll and personnel records, and providing reports, statistical surveys, rosters, documentation, and studies as required by the other federal agency to support its personnel administration activities; and

(19) To appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department 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 the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures may be made pursuant to 5 U.S.C. 552a(b)(12) and section 3 of the Debt Collection Act of 1982, Public Law 97–365; debt information concerning a government claim against an individual is also furnished, in accordance with 5 U.S.C. 552a(b)(12) and section 3 of the Debt Collection Act of 1982, to consumer reporting agencies to encourage repayment of an overdue debt. Disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act, 15 U.S.C. 1681a(f), or the Federal Claims Collection Act of 1966, 31 U.S.C. 701(a)(3).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic records, microfiche, and hard copy. Disbursement records are stored at the Federal Records Center.

RETRIEVABILITY:

Records are retrieved generally by social security number, position identification number within a bureau/agency and sub-organizational element, employee identification or employee name. Secondary identifiers are used to assure accuracy of data accessed, such as master record number or date of birth.

SAFEGUARDS:

Entrances to data centers and support organization offices are restricted to those employees whose work requires them to be there for the system to operate. Identification (ID) cards are verified to ensure that only authorized personnel are present. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed. Reports produced from the remote printers are in the custody of personnel and financial management officers and are subject to the same privacy controls as other documents of similar sensitivity.

RETENTION AND DISPOSAL:

The current payroll and personnel system and the personnel and payroll system's master files are kept as

electronic media. Information rendered to hard copy in the form of reports and payroll information documentation is also retained in an electronic media format. Employee records are retained in automated form for as long as the employee is active on the system (separated employee records are maintained in an ''inactive'' status). Files are purged in accordance with Treasury Directive 80–05, ''Records and Information Management Program.''

SYSTEM MANAGER(S) AND ADDRESS:

Department of the Treasury: Official prescribing policies and practices: Chief Human Capital Officer/Deputy Assistant Secretary for Human Resources, 1750 Pennsylvania Avenue NW., Washington, DC 20220.

The systems managers for the Treasury components are:

(1) a. DO: Deputy Assistant Secretary for Human Resources/Chief Human Capital Officer, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

b. OIG: Personnel Officer, 740 15th Street NW., Suite 500, Washington, DC 20220.

c. SIGTARP: Special Inspector General for the Troubled Asset Relief Program, 1801 L. Street NW., Washington, DC 20220.

d. TIGTA: Director, Human Resources, 1125 15th Street NW., Suite 700A, Washington, DC 20005.

(2) TTB: Chief, Personnel Division, 1310 G St. NW., Washington, DC 20220.

(3) OCC: Director, Human Resources, 400 7th Street SW., Washington, DC 20024.

(4) BEP: Chief, Office of Human Resources, 14th & C Streets SW., Room 202–13A, E&P Annex, Washington, DC 20228.

(5) FS: Director, Personnel Management Division, 3700 East-West Hwy., Room 115–F, Hyattsville, MD 20782.

(6) IRS: Associate Director, Transactional Processing Operations, 1111 Constitution Avenue NW., CP6, A:PS:TP, 2nd Floor, Washington, DC 20224.

(7) MINT: Associate Director for Workforce Solutions, 801 9th Street NW., 7th Floor, Washington, DC 20220.

(8) FinCEN: Chief of Personnel and Training, Vienna, VA 22183–0039.

A list of the Federal agencies for which Treasury is a cross-services provider and their respective system managers may be obtained by contacting the Chief Human Capital Officer/Deputy Assistant Secretary for Human Resources, at the address shown above.

NOTIFICATION PROCEDURE:

(1) Employees, former employees or applicants of the Department of the Treasury seeking notification and access to any record contained in the system of records, or seeking to contest its content, may inquire in accordance with instructions pertaining to individual Treasury components appearing at 31 CFR part 1, subpart C, appendices A–L. (2) Employees of other Federal agencies for which Treasury is a cross-services provider may request notification, access and amendment of their records through the personnel office at their home agency. (See ''System manager'' above).

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

The information contained in these records is provided by or verified by the subject of the record, supervisors, and non-Federal sources such as private employers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY .002

SYSTEM NAME:

Grievance Records—Treasury.

SYSTEM LOCATION:

Department of the Treasury, 1500 Pennsylvania Ave. NW., Washington, DC 20220. These records are located in personnel or designated offices in the bureaus in which the grievances were filed.

The locations at which the system is maintained are:

(1) a. Departmental Offices (DO): 1500 Pennsylvania Ave. NW., Washington, DC 20220.

b. The Office of Inspector General (OIG): 740 15th Street NW., Washington, DC 20220.

c. Treasury Inspector General for Tax Administration (TIGTA): 1125 15th Street NW., Suite 700A, Washington, DC 20005.

d. Special Inspector General for the Troubled Asset Relief Program (SIGTARP), 1801 L Street NW., Washington, DC 20220.

(2) Alcohol and Tobacco Tax and Trade Bureau (TTB): 1310 G St. NW., Washington, DC 20220.

(3) Office of the Comptroller of the Currency (OCC): 400 7th Street SW., Washington, DC 20024

(4) Bureau of Engraving and Printing (BEP): 14th & C Streets SW., Washington, DC 20228.

(5) Fiscal Service (FS): 401 14th Street SW., Washington, DC 20227.

(6) Internal Revenue Service (IRS): 1111 Constitution Avenue NW., Washington, DC 20224.

(7) United States Mint (MINT): 801 9th Street NW., Washington, DC 20220.

(8) Bureau of the Public Debt (BPD): Avery Street Building, 320 Avery Street Parkersburg, WV 26101.

(9) Financial Crimes Enforcement Network (FinCEN), Vienna, VA 22183–0039.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former Federal employees who have submitted grievances with their bureaus in accordance with part 771 of the Office of Personnel Management's (OPM) regulations (5 CFR part 771), the Treasury Employee Grievance System (TPM Chapter 771), or a negotiated procedure.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records relating to grievances filed by Treasury employees under part 771 of the OPM's regulations. These case files contain all documents related to the grievance 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. This system includes files and records of internal grievance and arbitration systems that bureaus and/or the Department may establish through negotiations with recognized labor organizations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 3301, 3302; E.O. 10577; 3 CFR 1954–1958 Comp., p. 218; E.O. 10987; 3 CFR 1959–1963 Comp., p. 519; agency employees, for personal relief in a matter of concern or dissatisfaction which is subject to the control of agency management.

PURPOSE(S):

To adjudicate employee administrative grievances filed under the authority of 5 CFR part 771 and the Department's Administrative Grievance Procedure.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used:

(1) To disclose pertinent information to the appropriate Federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) To disclose information to any source from which additional information is requested in the course of processing in a grievance, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested;

(3) To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an individual, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, 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 requesting the agency's decision on the matter;

(4) To provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(5) To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court;

(6) By the National Archives and Records Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2908;

(7) By the bureau maintaining the records of the Department in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference;

(8) To disclose information to officials of the Merit Systems Protection Board, the Office of the Special Counsel, the Federal Labor Relations Authority and its General Counsel, the Equal Employment Opportunity Commission, or the Office of Personnel Management when requested in performance of their authorized duties;

(9) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing Counsel or witnesses in the course of civil discovery, litigation or settlement negotiations in response to a court order, or in connection with criminal law proceedings;

(10) To provide information to officials of labor organizations reorganized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

(11) To appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department 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 the Department'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:

File folders.

RETRIEVABILITY:

Records may be retrieved by the names of individuals in the system.

SAFEGUARDS:

Lockable metal filing cabinets to which only authorized personnel have access.

RETENTION AND DISPOSAL:

Disposed of three years after the grievance filed closes. Disciplinary adverse actions are retained by the United States Secret Service for four years. Disposal is by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Records pertaining to administrative grievances filed at the Departmental level: Director, Office of Human Resources Strategy and Solutions, 1750 Pennsylvania Ave. NW., Suite 1200, Washington, DC 20220. Records pertaining to administrative grievances filed at the bureau level:

(1) a. DO: Director, Office of Human Resources for Departmental Offices, 1500 Pennsylvania Ave. NW., Room 5202—Main Treasury, Washington, DC 20220.

b. OIG: Personnel Officer, 740 15th St. NW., Rm. 510, Washington, DC 20220.

c. TIGTA: Director, Human Capital and Support Services, 1125 15th Street NW., Suite 700A, Washington, DC 20005.

(2) Alcohol and Tobacco Tax and Trade Bureau (TTB): 1310 G St. NW., Washington, DC 20220.

(3) OCC: Director, Human Resources, 400 7th Street SW., Washington, DC 20024

(4) BEP: Chief, Office of Human Resources, 14th & C Streets SW., Room 202–13A, E&P Annex, Washington, DC 20228.

(5) FS: Director, Personnel Management Division, 3700 East-West Hwy., Room 115–F, Hyattsville, MD 20782.

(6) IRS: Director, Office of Workforce Relations (M:S:L), 1111 Constitution Ave. NW., Room 1515IR, Washington, DC 20224.

(7) Mint: Associate Director for Workforce Solutions, 801 9th Street NW., 3rd Floor, Washington, DC 20220.

(8) BPD: Director, Human Resources Operations Division, Avery Street Building, 320 Avery Street, Parkersburg, WV 26101.

(9) FinCEN: Director, P.O. Box 39, Vienna, VA 22183–0039.

NOTIFICATION PROCEDURE:

It is required that individuals submitting grievances be provided a copy of the record under the grievance process. They may, however, contact the agency personnel or designated office where the action was processed, regarding the existence of such records on them. They must furnish the following information for their records to be located and identified: (1) Name, (2) date of birth, (3) approximate date of closing of the case and kind of action taken, (4) organizational component involved.

RECORD ACCESS PROCEDURES:

It is required that individuals submitting grievances be provided a copy of the record under the grievance process. However, after the action has been closed, an individual may request access to the official copy of the grievance file by contacting the bureau personnel or designated office where the action was processed. Individuals must provide the following information for their records to be located and identified: (1) Name, (2) date of birth, (3) approximate date of closing of the case and kind of action taken, (4) organizational component involved.

CONTESTING RECORD PROCEDURES:

Review of requests from individuals seeking amendment of their records which have been the subject of a judicial or quasi-judicial action will be limited in scope. Review of amendment

requests of these records will be restricted to determining if the record accurately documents the action of the agency ruling on the case, and will not include a review of the merits of the action, determination, or finding.

Individuals wishing to request amendment to their records to correct factual errors should contact the bureau personnel or designated office where the grievance was processed. Individuals must furnish the following information for their records to be located and identified: (1) Name, (2) date of birth, (3) approximate date of closing of the case and kind of action taken, (4) organizational component involved.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided: (1) By the individual on whom the record is maintained, (2) by testimony of witnesses, (3) by agency officials, (4) from related correspondence from organizations or persons.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY .003

SYSTEM NAME:

Treasury Child Care Tuition Assistance Records—Treasury.

SYSTEM LOCATION:

Department of the Treasury, 1500 Pennsylvania Ave. NW., Washington, DC 20220. The locations at which the system is maintained by Treasury components are:

(1) a. Departmental Offices (DO): 1500 Pennsylvania Ave. NW., Washington, DC 20220.

b. The Office of Inspector General (OIG): 740 15th Street NW., Washington, DC 20220.

c. Treasury Inspector General for Tax Administration (TIGTA): 1125 15th Street NW., Suite 700A, Washington, DC 20005.

(2) Alcohol and Tobacco Tax and Trade Bureau (TTB): 1310 G St. NW., Washington, DC 20220.

(3) Office of the Comptroller of the Currency (OCC): 400 7th Street SW., Washington, DC 20024.

(4) Bureau of Engraving and Printing (BEP): 14th & C Streets SW., Washington, DC 20228.

(5) Fiscal Service (FS): 401 14th Street SW., Washington, DC 20227.

(6) Internal Revenue Service (IRS): 1111 Constitution Avenue NW., Washington, DC 20224.

(7) United States Mint (MINT): 801 9th Street NW., Washington, DC 20220.

(8) Bureau of the Public Debt (BPD): Avery Street Building, 320 Avery Street, Parkersburg, WV.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Department of the Treasury who voluntarily apply for child care tuition assistance, the employee's spouse, their children and their child care providers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include application forms for child care tuition assistance containing personal information, including employee (parent) name, Social Security Number, pay grade, home and work numbers, addresses, telephone numbers, total family income, names of children on whose behalf the parent is applying for tuition assistance, each child's date of birth, information on child care providers used (including name, address, provider license number and State where issued, tuition cost, and provider tax identification number), and copies of IRS Form 1040 and 1040A for verification purposes. Other records may include the child's social security number, weekly expense, pay statements, records relating to direct deposits, verification of qualification and administration for the child care tuition assistance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 106–58, section 643 and E.O. 9397.

PURPOSE(S):

To establish and verify Department of the Treasury employees' eligibility for child care subsidies in order for the Department of the Treasury to provide monetary assistance to its employees. Records are also maintained so the Department can make payments to child care providers on an employee's behalf.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Department of the Treasury becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual;

(3) Disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding. In those cases where the Government is not a party to the proceeding, records may be disclosed if a subpoena has been signed by a judge;

(4) Disclose information to the National Archives and Records Administration for use in records management inspections;

(5) Disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the Department of the Treasury is authorized to appear, when: (a) The Department of the Treasury, or any component thereof; or (b) any employee of the Department of the Treasury in his or her official capacity; or (c) any employee of the Department of the Treasury in his or her individual capacity where the Department of Justice or the Department of the Treasury has agreed to represent the employee; or (d) the United States, when the Department of the Treasury determines that litigation is likely to affect the Department of the Treasury or any of its components; is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the Department of the Treasury is deemed by the Department of the Treasury to be relevant and necessary to the litigation; provided, however, that the disclosure is compatible with the purpose for which records were collected;

(6) Provide records to the Office of Personnel Management, Merit Systems Protection Board, Equal Employment Opportunity Commission, Federal Labor Relations Authority, the Office of Special Counsel, and General Accountability Office for the purpose of properly administering Federal personnel systems or other agencies' systems in accordance with applicable laws, Executive Orders, and regulations;

(7) Disclose information to contractors, grantees, or volunteers performing or working on a contract, service, grant, or cooperative agreement, or job for the Federal Government;

(8) Disclose information to a court, magistrate, or administrative tribunal when necessary and relevant in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena;

(9) Disclose information to unions recognized as exclusive bargaining representatives under 5 U.S.C. chapter 71, and other parties responsible for the administration of the Federal labor-

management program if needed in the performance of their authorized duties.

(10) To appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department 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 the Department'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 may be collected on paper or electronically and may be stored as paper forms or on computers.

RETRIEVABILITY:

By name; may also be cross-referenced to Social Security Number.

SAFEGUARDS:

When not in use by an authorized person, paper records are stored in lockable file cabinets or secured rooms. Electronic records are protected by the use of passwords.

RETENTION AND DISPOSAL:

Disposition of records is according to the National Archives and Records Administration (NARA) guidelines.

SYSTEM MANAGER(S) AND ADDRESS:

Treasury official prescribing policies and practices: Director, Office of Human Resources Strategy and Solutions, 1750 Pennsylvania Ave. NW., Suite 1200, Department of the Treasury, Washington, DC 20220. Officials maintaining the system and records for the Treasury components are:

(1) DO:

a. Director, Office of Human Resources for Departmental Offices, 1500 Pennsylvania Ave. NW., Room 5202–MT, Washington, DC 20220.

b. Office of General Counsel: Administrative Officer, Department of the Treasury, Room 3000–MT, Washington, DC 20220.

c. OIG: Personnel Officer, 740 15th St. NW., Suite 510, Washington, DC 20220.

d. TIGTA: Director, Human Capital and Support Services, 1125 15th Street NW., Suite 700A, Washington, DC 20005.

(2) TTB: Assistant Administrator, Office of Management, 1310 G St. NW., Washington, DC 20220.

(3) OCC: Director, Human Resources Division, 400 7th Street SW., Washington, DC 20024.

(4) BEP: Chief, Office of Human Resources. 14th & C St. SW., Room 202–13a, Washington, DC 20228.

(5) FS: Director, Human Resources Division, PG Center II Bldg., Rm. 114f, 3700 East-West Highway, Hyattsville, MD 20782.

(6) IRS: Director Personnel Policy Division, 1111 Constitution Ave., Building CP6–M:S:P, Washington, DC 20224.

(7) MINT: Associate Director for Workforce Solutions, 801 9th Street NW., 3rd Floor, Washington, DC 20220.

(8) FS: Child Care Assistance Program (CCAP) Coordinator, Avery Street Building, 320 Avery Street, Parkersburg, WV 26101.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in the system of records, or seeking to contest its content, may inquire in accordance with instructions pertaining to individual Treasury components appearing at 31 CFR part 1, subpart C, appendices A–M.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Information is provided by Department of the Treasury employees who apply for child care tuition assistance.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY .004

SYSTEM NAME:

Freedom of Information Act/Privacy Act Request Records—Treasury.

SYSTEM LOCATION:

Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220. The locations at which the system is maintained by Treasury components and their associated field offices are:

(1) Departmental Offices (DO), which includes the Office of Inspector General (OIG), the Community Development Financial Institutions Fund (CDFI), and Special Inspector General for the Troubled Asset Relief Program (SIGTARP);

(2) Alcohol and Tobacco Tax and Trade Bureau (TTB);

(3) Office of the Comptroller of the Currency (OCC);

(4) Bureau of Engraving and Printing (BEP);

(5) Fiscal Service (FS);

(6) United States Mint (MINT);

(7) Financial Crimes Enforcement Network (FinCEN);

(8) Treasury Inspector General for Tax Administration (TIGTA); and

(9) Internal Revenue Service (IRS).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have: (1) Requested access to records pursuant to the Freedom of Information Act, 5 U.S.C. 552 (FOIA), or who have appealed initial denials of their requests; and/or (2) made a request for access, amendment, or other action pursuant to the Privacy Act of 1974, 5 U.S.C. 552a (PA).

CATEGORIES OF RECORDS IN THE SYSTEM:

Requests for records or information pursuant to the FOIA/PA, which includes the names of individuals making written or electronically submitted requests for records under the FOIA/PA; the contact information of the requesting individual such as their mailing address, email address, and/or phone number; and the dates of such requests and their receipt. Supporting records include the written correspondence received from requesters and responses made to such requests; internal processing documents and memoranda; referrals and copies of records provided or withheld; and may include legal memoranda and opinions. Comparable records are maintained in this system with respect to any appeals made from initial denials of access, refusal to amend records, and lawsuits under the FOIA/PA.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Freedom of Information Act, 5 U.S.C. 552; Privacy Act of 1974, 5 U.S.C. 552a; and 5 U.S.C. 301.

PURPOSE(S):

The system is used by officials to administratively control and/or process requests for records to ensure compliance with the FOIA/PA and to collect data for the annual reporting requirements of the FOIA and other Departmental management report requirements. In addition, the system allows for online submission to expedite the consideration of requests.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose pertinent information to appropriate Federal, foreign, State, local, tribal or other public authorities or self-regulatory organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a court order, or in connection with criminal law proceedings;

(3) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(4) Disclose information to another Federal agency to (a) permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency, or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment or correction of records;

(5) Disclose information to the Department of Justice when seeking legal advice, or when (a) the agency, or (b) any component thereof, or (c) any employee of the agency in his or her official capacity, or (d) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (e) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation;

(6) Disclose information to the appropriate foreign, State, local, tribal, or other public authority or self-regulatory organization for the purpose of (a) consulting as to the propriety of access to or amendment or correction of information obtained from that authority or organization, or (b) verifying the identity of an individual who has requested access to or amendment or correction of records;

(7) Disclose information to contractors and other agents who have been engaged by the Department or one of its bureaus to provide products or services associated with the Department's or bureaus' responsibilities arising under the FOIA/PA;

(8) Disclose information to the National Archives and Records Administration for use in records management inspections;

(9) Disclose information to appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department 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 the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

(10) To the National Archives and Records Administration, Office of Government Information Services (OGIS), to the extent necessary to fulfill its responsibilities in 5 U.S.C. 552(b), to review administrative agency policies, procedures and compliance with the Freedom of Information Act (FOIA), and to facilitate OGIS' offering of mediation services to resolve disputes between persons making FOIA requests and administrative agencies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic media, computer paper printout, index file cards, and paper records in file folders.

RETRIEVABILITY:

Retrieved by name, subject, request file number, or other data element as may be permitted by an automated system.

SAFEGUARDS:

Protection and control of any sensitive but unclassified (SBU) records are in accordance with Treasury Directive Publication 71–10, Department of the Treasury Security Manual; DO P–910, Departmental Offices Information Technology Security Policy Handbook; Treasury Directive Publication 85–01, Treasury Information Technology Security Program; National Institute of Standards and Technology 800–122 and any supplemental guidance issued by individual bureaus; the National Institute of Standards and Technology Special Publication 800–53 Revision 3, Recommended Security Controls for Federal Information Systems and Organizations; and Guide to Protecting the Confidentiality of Personally Identifiable Information. Access to the records is available only to employees responsible for the management of the system and/or employees of program offices who have a need for such information.

RETENTION AND DISPOSAL:

The records pertaining to FOIA/PA requests are retained and disposed of in accordance with the National Archives and Records Administration's General Record Schedule 14—Information Services Records.

SYSTEM MANAGER(S) AND ADDRESS:

Department of the Treasury: Official prescribing policies and practices—Departmental Disclosure Officer, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

The system managers for the Treasury components are:

(1) a. DO: Director, Disclosure Services, Department of the Treasury, Washington, DC 20220.

b. OIG: Director, Disclosure Services, Department of the Treasury, Washington, DC 20220.

c. CDFI: Director, Disclosure Services, Department of the Treasury, Washington, DC 20220.

d. SIGTARP: General Counsel, Office of the Special Inspector General for the Troubled Asset Relief Program, 1801 L Street NW., Washington, DC 20220.

(2) Alcohol and Tobacco Tax and Trade Bureau (TTB): 1310 G St. NW., Washington, DC 20220.

(3) BEP: Disclosure Officer, FOIA Office, 14th & C Streets SW., Washington, DC 20228.

(4) FS: Disclosure Officer, 401 14th Street SW., Washington, DC 20227.

(5) Mint: Disclosure Officer, 801 9th Street NW., 8th Floor, Washington, DC 20220.

(6) OCC: Disclosure Officer, Communications Division, 400 7th Street SW., Washington, DC 20024.

(7) FinCEN: P.O. Box 39, Vienna, VA 22183.

(8) TIGTA: Director, Human Capital and Support Services, 1401 H St. NW., Ste. 469, Washington, DC 20005.

(9) IRS: Internal Revenue Service Centralized Processing Unit—Stop 93A,

Post Office Box 621506, Atlanta, GA 30362.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in the system of records, or seeking to contest its content, may inquire in accordance with instructions pertaining to individual Treasury components appearing at 31 CFR part 1, subpart C, appendices A–M.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

The information contained in these files originates from individuals who make FOIA/PA requests and agency officials responding to those requests.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None. Please note that the Department has claimed one or more exemptions (see 31 CFR 1.36) for a number of its other systems of records under 5 U.S.C. 552a(j)(2) and (k)(1), (2), (3), (4), (5), and (6). During the course of a FOIA/PA action, exempt materials from those other systems may become a part of the case records in this system. To the extent that copies of exempt records from those other systems have been recompiled and/or entered into these FOIA/PA case records, the Department claims the same exemptions for the records as they have in the original primary systems of records of which they are a part.

TREASURY .005

SYSTEM NAME:

Public Transportation Incentive Program Records—Treasury.

SYSTEM LOCATION:

Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220. The locations at which the system is maintained by Treasury bureaus and their associated field offices are:

(1) a. Departmental Offices (DO): 1500 Pennsylvania Ave. NW., Washington, DC 20220.

b. The Office of Inspector General (OIG): 740 15th Street NW., Washington, DC 20220.

c. Treasury Inspector General for Tax Administration (TIGTA): 1125 15th Street NW., Suite 700A, Washington, DC 20005.

d. Special Inspector General for the Troubled Asset Relief Program (SIGTARP), 1801 L Street NW., Washington, DC 20220.

(2) Alcohol and Tobacco Tax and Trade Bureau (TTB): 1310 G St. NW., Washington, DC 20220.

(3) Office of the Comptroller of the Currency (OCC): 400 7th Street SW., Washington, DC 20024.

(4) Bureau of Engraving and Printing (BEP): 14th & C Streets SW., Washington, DC 20228.

(5) Fiscal Service (FS): 401 14th Street SW., Washington, DC 20227.

(6) Internal Revenue Service (IRS): 1111 Constitution Avenue NW., Washington, DC 20224.

(7) United States Mint (MINT): 801 9th St. NW., Washington, DC 20220.

(8) Bureau of the Public Debt (BPD): Avery Street Building, 320 Avery Street, Parkersburg, WV 26101.

(9) Financial Crimes Enforcement Network (FinCEN), Vienna, VA 22182.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees who have applied for or who participate in the Public Transportation Incentive Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Public Transportation Incentive Program application form containing the participant's name, last four digits of the social security number, or for IRS employees the Standard Employee Identifier (SEID) issued by the IRS, place of residence, office address, office telephone, grade level, duty hours, previous method of transportation, costs of transportation, and the type of fare incentive requested. Incentives authorized under the Federal Workforce Transportation Program may be included in this program.

(2) Reports submitted to the Department of the Treasury in accordance with Treasury Directive 74–10.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 26 U.S.C. 132(f), and Public Law 101–509.

PURPOSE(S):

The records are used to administer the public transportation incentive or subsidy programs provided by Treasury bureaus for eligible employees. The system also enables the Department to compare these records with other Federal agencies to ensure that employee transportation programs benefits are not abused.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to disclose information to:

(1) Appropriate Federal, state, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order or license;

(2) A court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a court-ordered subpoena where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(3) A congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(4) Unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and/or 7114;

(5) Agencies, contractors, and others to administer Federal personnel or payroll systems, and for debt collection and employment or security investigations;

(6) Other Federal agencies for matching to ensure that employees receiving PTI Program benefits are not listed as a carpool or vanpool participant, the holder of a parking permit; and to prevent the program from being abused;

(7) The Department of Justice when seeking legal advice, or when (a) the Department of the Treasury (agency) or (b) any component thereof, or (c) any employee of the agency in his or her official capacity, or (d) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (e) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation;

(8) The Office of Personnel Management, the Merit Systems Protection Board, the Equal Employment Opportunity Commission, and the Federal Labor Relations Authority or other third parties when mandated or authorized by statute; and

(9) A contractor for the purpose of compiling, organizing, analyzing, programming, or otherwise refining records to accomplish an agency function subject to the same limitations applicable to U.S. Department of Treasury officers and employees under the Privacy Act;

(10) To appropriate agencies, entities, and persons when (a) the Department

suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department 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 the Department'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:

Paper records, file folders and/or electronic media.

RETRIEVABILITY:

By name of individual, badge number or office.

SAFEGUARDS:

Access is limited to authorized employees. Files are maintained in locked safes and/or file cabinets. Electronic records are password-protected. During non-work hours, records are stored in locked safes and/or cabinets in locked room.

RETENTION AND DISPOSAL:

Active records are retained indefinitely. Inactive records are held for three years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

The system managers for the Treasury bureaus are:

(1) Departmental Offices:

a. Director, Occupational Safety and Health Office, Room 6204 Annex, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

b. Office of Inspector General: Office of Assistant Inspector for Management Services, Office of Administrative Services, Suite 510, 740 15th St. NW., Washington, DC 20220.

c. TIGTA: Director, Human Capital and Support Services, 1125 15th Street NW., Suite 700A, Washington, DC 20005.

(2) TTB: Alcohol and Tobacco Tax and Trade Bureau: 1310 G St. NW., Washington, DC 20220.

(3) BEP: Chief, Office of Human Resources, Bureau of Engraving and Printing, 14th and C Streets SW., Washington, DC 20228.

(4) OCC: Building Manager, Building Services, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20024.

(5) FMS: Director, Administrative Programs Division, Financial Management Service, 3700 East West Hwy., Room 144, Hyattsville, MD 20782.

(6) IRS: Official prescribing policies and practices—Chief, National Office, Protective Program Staff, Director, Personnel Policy Division, 2221 S. Clark Street-CP6, Arlington, VA 20224. Officials maintaining the system—Supervisor of local offices where the records reside. (See IRS Appendix A for addresses.)

(7) Mint: Office of Procurement and Support Services Division, Support Services Branch, 801 9th St. NW., 2nd Floor, Washington, DC 20220.

(8) BPD: Director, Division of Administrative Services, Avery Street Building, 320 Avery Street, Parkersburg, WV 26101.

(9) FinCEN: Director, P.O. Box 39, Vienna, VA 22183–0039.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in the system of records, or seeking to contest its content, may inquire in accordance with instructions pertaining to individual Treasury components appearing at 31 CFR part 1, subpart C, appendices A–M.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

The source of the records is from employees who have applied for the transportation incentive, the incentive program managers and other appropriate agency officials, or other Federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY .006

SYSTEM NAME:

Parking and Carpool Program Records—Treasury.

SYSTEM LOCATION:

Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220. The locations at which the system is maintained by Treasury bureaus and their associated field offices are:

(1) a. Departmental Offices (DO): 1500 Pennsylvania Ave. NW., Washington, DC 20220.

b. The Office of Inspector General (OIG): 740 15th Street NW., Washington, DC 20220.

c. Treasury Inspector General for Tax Administration (TIGTA): 1125 15th Street NW., Suite 700A, Washington, DC 20005.

d. Special Inspector General for the Troubled Asset Relief Program (SIGTARP), 1801 L Street NW., Washington, DC 20220.

(2) Alcohol and Tobacco Tax and Trade Bureau (TTB): 1310 G St. NW., Washington, DC 20220.

(3) Office of the Comptroller of the Currency (OCC): 400 7th Street SW., Washington, DC 20024.

(4) Bureau of Engraving and Printing (BEP): 14th & C Streets SW., Washington, DC 20228.

(5) Fiscal Service (FS): 401 14th Street SW., Washington, DC 20227.

(6) Internal Revenue Service (IRS): 1111 Constitution Avenue NW., Washington, DC 20224.

(7) United States Mint (MINT): 801 9th Street NW., Washington, DC 20220.

(8) Bureau of the Public Debt (BPD): 799 E Street NW., Washington, DC 20239.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current employees of the Department and individuals from other government agencies or private sector organizations who may use, or apply to use, parking facilities or spaces controlled by the Department. Individuals using handicapped or temporary guest parking controlled by the Department.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include the name, position title, manager's name, organization, vehicle identification, arrival and departure time, home addresses, office telephone numbers, social security numbers, badge number, and service computation date or length of service with a component of an individual or principal carpool applicant. Contains name, place of employment, duty telephone, vehicle license number and service computation date of applicants, individuals or carpool members. For parking spaces, permit number, priority group (handicapped, job requirements/executive officials (SES) or carpool/vanpool). Medical information may also be included when necessary to determine disability of applicant when applying for handicapped parking spaces.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3101; Treasury Department Order No. 165, revised as

amended. Federal Property and Administrative Services Act of 1949, as amended.

PURPOSE(S):

The records are used to administer parking, carpool and vanpool programs within the Department. The system enables the Department to allocate and check parking spaces assigned to government or privately-owned vehicles operated by visitors, handicapped personnel, key personnel, and employees eligible to participate in a parking program and carpools or vanpools. The Department is also able to compare these records with other Federal agencies to ensure parking privileges or other employee transportation benefits are not abused.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to disclose information to:

(1) Appropriate Federal, State, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) A Congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(3) A physician for making a determination on a person's eligibility for handicapped parking;

(4) A contractor who needs to have access to this system of records to perform an assigned activity;

(5) Parking coordinators of Government agencies and private sector organizations for verification of employment and participation of pool members;

(6) Unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114;

(7) Department of Justice when seeking legal advice, or when (a) the Department of the Treasury (agency) or (b) any component thereof, or (c) any employee of the agency in his or her official capacity, or (d) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (e) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation;

(8) Third parties when mandated or authorized by statute or when necessary to obtain information that is relevant to an inquiry concerned with the possible abuse of parking privileges or other employee transportation benefits;

(9) A court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a court order where relevant or potentially relevant to a proceeding, and

(10) Officials of the Merit Systems Protection Board, the Federal Labor Relations Authority, the Equal Employment Opportunity Commission or the Office of Personnel Management when requested in the performance of their authorized duties.

(11) To appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department 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 the Department'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:

Hard copy and/or electronic media.

RETRIEVABILITY:

Name, address, social security number, badge number, permit number, vehicle tag number, and agency name or organization code on either the applicant or pool members as needed by a bureau. Records are filed alphabetically by location.

SAFEGUARDS:

Paper records are maintained in locked file cabinets. Access is limited to personnel whose official duties require such access and who have a need to know the information in a record for a job-related purpose Access to computerized records is limited, through use of a password, to those whose official duties require access. Protection and control of sensitive but unclassified (SBU) records are in accordance with TD P 71–10, Department of the Treasury Security Manual, and any supplemental guidance issued by individual bureaus. The IRS access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00, and the Manager's Security Handbook, IRM 1(16)12.

RETENTION AND DISPOSAL:

Generally, record maintenance and disposal is in accordance with NARA General Retention Schedule 11, and any supplemental guidance issued by individual components. Disposal of manual records is by shredding or burning; electronic data is erased. Destroyed upon change in, or revocation of, parking assignment. For the IRS, records are maintained in accordance with Records Control Schedule 301—General Records Schedule 11, Space and Maintenance Records, Item 4(a), IRM 1(15)59.31.

SYSTEM MANAGER(S) AND ADDRESS:

The system managers for the Treasury components are:

(1) DO:

a. Director, Occupational Safety and Health Office, Room 6204 Annex, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

b. OIG: Director, Administrative Services Division, Office of Management Services, Room 510, 740 15th Street NW., Washington, DC 20220.

c. TIGTA: Director, Human Capital and Support Services, 1125 15th Street NW., Suite 700A, Washington, DC 20005.

(2) TTB: Alcohol and Tobacco Tax and Trade Bureau: 1310 G St. NW., Washington, DC 20220.

(3) OCC: Building Manager, Building Services, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20024

(4) BEP: Chief, Office of Security, Bureau of Engraving and Printing, 14th and C Streets SW., Washington, DC 20228.

(5) FMS: Director, Administrative Programs Division, 3700 East West Highway, Hyattsville, MD 20782.

(6) IRS: Chief, Security and Safety Branch; Regional Commissioners, District Directors, Internal Revenue Service Center Directors, and Computing Center Directors. (See IRS Appendix A for addresses.)

(7) MINT: Office of Procurement and Support Services Division, Support Services Branch, 801 9th St. NW., 2nd Floor, Washington, DC 20220.

(8) BPD: Director, Washington Support Services, Bureau of the Public Debt, 799 E Street NW., Washington, DC 20239.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in the system of records, or seeking to contest its content, may inquire in accordance with instructions pertaining to individual Treasury components appearing at 31 CFR part 1, subpart C, appendices A–M.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Parking permit applicants, members of carpools or vanpools, other Federal agencies, medical doctor if disability determination is requested.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY .007

SYSTEM NAME:

Personnel Security System—Treasury.

SYSTEM LOCATION:

Department of the Treasury, 1500 Pennsylvania Avenue NW., Room 3180 Annex, Washington, DC 20220, in the Office of Security Programs (and other office locations identified below) which is responsible for making suitability, fitness, security clearance, access, and Homeland Security Presidential Directive–12 (HSPD–12) credentialing decisions. Other locations at which the system is maintained by Treasury bureaus and their associated offices are:

(1) Departmental Offices (DO):

a. 1500 Pennsylvania Avenue NW., Room 3180 Annex, Washington, DC 20220.

b. Special Inspector General for the Troubled Asset Relief Program (SIGTARP): 1801 L Street NW., Washington, DC 20220.

(2) Office of Inspector General (OIG): 320 Avery Street, Parkersburg, West Virginia 26101.

(3) Treasury Inspector General for Tax Administration (TIGTA): 1401 H Street NW., Suite 469, Washington, DC 20005.

(4) Alcohol and Tobacco Tax and Trade Bureau (TTB): 1310 G Street NW., Washington, DC 20220.

(5) Office of the Comptroller of the Currency (OCC): 400 7th Street SW., Washington, DC 20219.

(6) Bureau of Engraving and Printing (BEP): 14th & C Streets SW., Washington, DC 20228.

(7) Bureau of the Fiscal Service (BFS): Security Operations Division, Personnel Security Branch, 3700 East West Highway, Hyattsville, Maryland and BFS at 320 Avery Street, Parkersburg, West Virginia 26101.

(8) United States Mint (MINT): 801 9th Street NW., Washington, DC 20220.

(9) Financial Crimes Enforcement Network (FinCEN), Vienna, Virginia 22183–0039.

(10) Internal Revenue Service (IRS), 1111 Constitution Avenue NW., Washington, DC 20224.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Current and former government employees, applicants, consultants, experts, contractor personnel occupying sensitive positions in the Department; (2) current and former U.S. Executive Directors and Alternates employed at International Financial Institutions; (3) personnel who are appealing a denial or a revocation of a Treasury-issued security clearance; (4) employees and contractor personnel who have applied for the HSPD–12 Personal Identity Verification (PIV) Card; (5) individuals who are not Treasury employees, but who are or were involved in Treasury Department programs under a co-operative assignment or under a similar agreement, and State, Local, Tribal and Private sector partners identified by Treasury sponsors for eligibility to access classified information in support of homeland defense initiatives.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Applicable records containing the following information within background investigations relating to personnel investigations conducted by the Office of Personnel Management, select Treasury bureaus (IRS, Mint and BEP) and other Federal agencies and departments on a pre-placement and post-placement basis to make suitability, fitness, and HSPD–12 PIV determinations and for granting security clearances, *i.e.,* individual's name, former names and aliases; date and place of birth; social security number; height; weight; hair and eye color; gender; mother's maiden name; current and former home addresses, phone numbers, and email addresses; employment history; military record information; selective service registration record; residential history; education and degrees earned; names of associates and references with their contact information; citizenship; passport information; criminal history; civil court actions; prior security clearance and investigative information; mental health history; records related to drug and/or alcohol use; financial record information; information from the IRS pertaining to income tax returns; credit reports; the name, date and place of birth, social security number, and citizenship information for spouse or cohabitant; the name and marriage information for current and former spouse(s); the citizenship, name, date and place of birth, and address for relatives; information on foreign contacts and activities; association records; information on loyalty to the United States; and other agency reports furnished to Treasury in connection with the background investigation process, and other information developed from the above; (2) summaries of personal and third party interviews conducted during the course of the background investigation; (3) previously used card index records comprised of Notice of Personnel Security Investigation (OS F 67–32.2); (4) signed Classified Information Non-disclosure Agreement (SF 311), and related supplemental documents for those persons issued a security clearance; (5) completed Security Orientation Acknowledgment (TD F 15–05.01) for persons having received initial security training on safeguarding classified information ; (6) an automated data system reflecting identification data on incumbents and former employees, disclosure and authorization forms, and record of investigations, level and date of security clearance, if any, as well as status of investigations; (7) records pertaining to suspensions or an appeal of a denial or a revocation of a Treasury-issued security clearance; (8) records pertaining to the personal identification verification process mandated by HSPD–12 and the issuance, denial or revocation of a PIV card; and (9) records of personnel background investigations conducted by other Federal agencies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 2 & 3, Executive Order 10450, Executive Order 12968, as amended, and HSPD–12.

PURPOSE(S):

(1) The records in this system are used to provide investigatory information for determinations concerning whether an individual is suitable or fit for Government employment; eligible for logical and physical access to Treasury controlled facilities and information systems; eligible to hold sensitive positions (including but not limited to eligibility

for access to classified information); fit to perform work for or on behalf of the U.S. Government as a contractor; qualified to perform contractor services for the U.S. Government; or loyal to the United States; (2) additionally, these records are used to ensure the Treasury is upholding the highest standards of integrity, loyalty, conduct, and security among its employees and contract personnel; (3) the records may be used to help streamline and make the adjudicative process more efficient; and (4) to otherwise conform with applicable legal, regulatory and policy authorities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

All or a portion of the Treasury records contained in this system may be used to disclose information to: (1) Designated officers and employees of agencies, offices, and other establishments in the executive, legislative and judicial branches of the Federal government, when such agency, office, or establishment conducts an investigation of the individual for purposes of granting a security clearance, or for the purpose of making a determination of qualifications, suitability, fitness, or issuance of an HSPD–12 PIV card for physical and/or logical access to facilities/IT systems or restricted areas; to determine access to classified information and/or in connection with performance of a service to the Federal government under a contract or other agreement; (2) pursuant to the order of a court of competent jurisdiction; (3) the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the Department of the Treasury is authorized to appear, when: (a) The Department of the Treasury, or any component thereof; or (b) any employee of the Department of the Treasury in his or her official capacity; or (c) any employee of the Department of the Treasury in his or her individual capacity where the Department of Justice or the Department of the Treasury has agreed to represent the employee; or (d) the United States, when the Department of the Treasury determines that litigation is likely to affect the Department of the Treasury or any of its components; is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the Department of the Treasury is deemed by the Department of the Treasury to be relevant and necessary to the litigation; provided, however, that the disclosure is compatible with the purpose for which records were collected; (4) a congressional office in response to a written inquiry made at the request of the individual to whom the record pertains; (5) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Treasury component which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought; (6) the Office of Personnel Management, Merit Systems Protection Board, Equal Employment Opportunity Commission, Federal Labor Relations Authority, and the Office of Special Counsel for the purpose of properly administering Federal personnel systems or other agencies' systems in accordance with applicable laws, Executive Orders, and regulations; and (7) to appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department 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 Treasury'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 paper format in file folders, on index cards, magnetic media and in electronic database in the Personnel Security System, and the e-QIP system.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Paper records are stored in locked metal containers and in locked rooms. Electronic records are password protected. Access is limited to authorized Treasury security officials who have a need to know in the performance of their official duties and whose background investigations have been favorably adjudicated before they are allowed access to the records.

RETENTION AND DISPOSAL:

The records on government employees and contractor personnel are retained for the duration of their employment at the Treasury Department. The records on applicants not selected and separated employees are destroyed or sent to the Federal Records Center in accordance with General Records Schedule 18.

SYSTEM MANAGER(S) AND ADDRESS:

Department of the Treasury Official prescribing policies and practices: Director, Office of Security Programs, 1500 Pennsylvania Avenue NW., Room 3180 Annex, Washington, DC 20220.

The system managers for the Treasury bureau components are:

(1) Departmental Offices:

a. Chief, Personnel Security, 1500 Pennsylvania Avenue NW., Room 3180 Annex, Washington, DC 20220.

b. SIGTARP: Director, Human Resources, 1801 L Street NW., Washington, DC 20220.

(2) OIG: Personnel Officer, 740 15th Street NW., Suite 510, Washington, DC 20220.

(3) TIGTA: Personnel Security Officer, 1401 H Street NW., Suite 469, Washington, DC 20005.

(4) TTB: Alcohol and Tobacco Tax and Trade Bureau: Director of Security and Emergency Preparedness 1310 G Street NW., Washington, DC 20220.

(5) BFS: Director, Division of Security and Emergency Preparedness, Director, Division of Human Resources Operations Division, Avery Street Building, 320 Avery Street, Parkersburg, West Virginia 26101 and Director, Administrative Programs Division, 3700 East West Highway, Hyattsville, Maryland 20782.

(6) OCC: Director, Administrative Services Division, 400 7th Street SW., Washington, DC 20219.

(7) BEP: Chief, Office of Security, 14th & C Streets NW., Washington, DC 20228.

(8) Mint: Associate Director for Protection, 801 9th Street NW., 8th Floor, Washington, DC 20220.

(9) FinCEN: Director, Vienna, Virginia 22183–0039.

(10) IRS: Director, Personnel Security, 1111 Constitution Avenue NW., Washington, DC 20224.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in the system of records, or seeking to contest

its content, may inquire in accordance with instructions pertaining to individual Treasury components appearing at 31 CFR part 1, subpart C, appendices A–N.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

The information provided by individual employees, consultants, experts and contractors (including the results of in-person interviews) whose files are on record as authorized by those concerned, information obtained from current and former employers, co-workers, neighbors, acquaintances, educational records and instructors, and police and credit record checks.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a(c)(3), (d)(1), (2), (3), and (4), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(5). (See 31 CFR 1.36.)

TREASURY .009

SYSTEM NAME:

Treasury Fiscal Service Systems—Treasury.

SYSTEM LOCATION:

Department of the Treasury, 1500 Pennsylvania Ave. NW., Washington, DC 20220. The locations at which the system is maintained by Treasury components and their associated field offices are:

(1) Departmental Offices (DO):

a. Office of Financial Management, Attn: Met Sq. Bldg., 6th Fl., 1500 Pennsylvania Avenue NW., Washington, DC 20220.

b. The Office of Inspector General (OIG): 740 15th Street NW., Washington, DC 20220.

c. Treasury Inspector General for Tax Administration (TIGTA): 1125 15th Street NW., Suite 700A, Washington, DC 20005.

d. Special Inspector General for the Troubled Asset Relief Program (SIGTARP), 1801 L. Street NW., Washington, DC 20220.

e. Community Development Financial Institutions Fund (CDFI): 601 13th Street NW., Suite 200 South, Washington, DC 20005.

f. Federal Financing Bank (FFB): 1500 Pennsylvania Avenue NW., South Court One, Washington, DC 20220.

g. Office of International Affairs (IA): 1500 Pennsylvania Avenue NW., Room 5441D, Washington, DC 20220.

h. Treasury Forfeiture Fund: 740 15th Street NW., Suite 700, Washington, DC 20220.

i. Treasury Franchise Fund: Avery Street Building, 320 Avery Street, Parkersburg, WV 26101.

(2) Alcohol and Tobacco Tax and Trade Bureau (TTB): 1310 G St. NW., Washington, DC 20220.

(3) Office of the Comptroller of the Currency (OCC): 400 7th Street SW., Washington, DC 20024.

(4) Bureau of Engraving and Printing (BEP): 14th & C Streets SW., Washington, DC 20228.

(5) Fiscal Service (FS): 401 14th Street SW., Washington, DC 20227.

(6) Internal Revenue Service (IRS): 1111 Constitution Avenue NW., Washington, DC 20224.

(7) United States Mint (MINT): 801 9th Street NW., Washington, DC 20220.

(8) Bureau of the Public Debt (BPD): Avery Street Building, 320 Avery Street, Parkersburg, WV 26101.

(10) Financial Crimes Enforcement Network (FinCEN), Vienna, VA 22183–0039.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Current and former Treasury employees, non-Treasury personnel on detail to the Department, current and former vendors, all debtors including employees or former employees; (2) persons paying for goods or services, returning overpayment or otherwise delivering cash; (3) individuals, private institutions and business entities who are currently doing business with, or who have previously conducted business with the Department of the Treasury to provide various goods and services; (4) individuals who are now or were previously involved in tort claims with Treasury; (5) individuals who are now or have previously been involved in payments (accounts receivable/revenue) with Treasury; and (6) individuals who have been recipients of awards. Only records reflecting personal information are subject to the Privacy Act. The system also contains records concerning corporations, other business entities, and organizations whose records are not subject to the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

The financial systems used by the Treasury components to collect, maintain and disseminate information include the following types of records: Routine billing, payment, property accountability, and travel information used in accounting and financial processing; administrative claims by employees for lost or damaged property; administrative accounting documents, such as relocation documents, purchase orders, vendor invoices, checks, reimbursement documents, transaction amounts, goods and services descriptions, returned overpayments, or otherwise delivering cash, reasons for payment and debt, travel-related documents, training records, uniform allowances, payroll information, etc., which reflect amount owed by or to an individual for payments to or receipt from business firms, private citizens and or institutions. Typically, these documents include the individual's name, social security number, address, and taxpayer identification number. Records in the system also include employment data, payroll data, position and pay data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3512, 31 U.S.C. 3711, 31 U.S.C. 3721, 5 U.S.C. 5701 *et seq.,* 5 U.S.C. 4111(b), Public Law 97–365, 26 U.S.C. 6103(m)(2), 5 U.S.C. 5514, 31 U.S.C. 3716, 31 U.S.C. 321, 5 U.S.C. 301, 5 U.S.C. 4101 *et seq.,* 41 CFR parts 301–304, EO 11348, and Treasury Order 140–01.

PURPOSE(S):

The Treasury Integrated Financial Management and Revenue System is to account for and control appropriated resources; maintain accounting and financial information associated with the normal operations of government organizations such as billing and follow-up, for paying creditors, to account for goods and services provided and received, to account for monies paid and received, process travel authorizations and claims, process training claims, and process employee claims for lost or damaged property. The records management and statistical analysis subsystems provide a data source for the production of reports, statistical surveys, documentation and studies required for integrated internal management reporting of costs associated with the Department's operation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to disclose information:

(1) To appropriate Federal, State, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) To the Department of Justice when seeking legal advice, or when (a) the agency or (b) any component thereof, or (c) any employee of the agency in his or her official capacity, or (d) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (e) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records;

(3) To a Federal, State, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(4) In a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear when: (a) The agency, or (b) or any component thereof, or (c) any employee of the agency in his or her official capacity, or (d) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or (e) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(5) To a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(6) To the news media in accordance with guidelines contained in 28 CFR 50.2 which pertain to an agency's functions relating to civil and criminal proceedings;

(7) To third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(8) To a public or professional licensing organization when such information indicates, either by itself or in combination with other information, a violation or potential violation of professional standards, or reflects on the moral, educational, or professional qualifications of an individual who is licensed or who is seeking to become licensed;

(9) To a contractor for the purpose of compiling, organizing, analyzing, programming, processing, or otherwise refining records subject to the same limitations applicable to U.S. Department of the Treasury officers and employees under the Privacy Act;

(10) To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a court order;

(11) Through a computer matching program, information on individuals owing debts to the Department of the Treasury, or any of its components, to other Federal agencies for the purpose of determining whether the debtor is a Federal employee or retiree receiving payments which may be used to collect the debt through administrative or salary offset;

(12) To other Federal agencies to effect salary or administrative offset for the purpose of collecting debts, except that addresses obtained from the IRS shall not be disclosed to other agencies;

(13) To disclose information to a consumer reporting agency, including mailing addresses obtained from the Internal Revenue Service, to obtain credit reports;

(14) To a debt collection agency, including mailing addresses obtained from the Internal Revenue Service, for debt collection services;

(15) To unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114, the Merit Systems Protection Board, arbitrators, the Federal Labor Relations Authority, and other parties responsible for the administration of the Federal labor-management program for the purpose of processing any corrective actions, or grievances, or conducting administrative hearings or appeals, or if needed in the performance of other authorized duties;

(16) To a public or professional auditing organization for the purpose of conducting financial audit and/or compliance audits;

(17) To a student participating in a Treasury student volunteer program, where such disclosure is necessary to support program functions of Treasury, and

(18) To insurance companies or other appropriate third parties, including common carriers and warehousemen, in the course of settling an employee's claim for lost or damaged property filed with the Department.

(19) To appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department 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 the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures made pursuant to 5 U.S.C. 552a(b)(12): Debt information concerning a government claim against an individual may be furnished in accordance with 5 U.S.C. 552a(b)(12) and section 3 of the Debt Collection Act of 1982 (Pub. L. 97–365) to consumer reporting agencies to encourage repayment of an overdue debt.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper, microform and electronic media.

RETRIEVABILITY:

Name, social security number, vendor ID number, and document number (travel form, training form, purchase order, check, invoice, etc.).

SAFEGUARDS:

Protection and control of sensitive but unclassified (SBU) records in this system is in accordance with TD P 71–10, Department of the Treasury Security Manual, and any supplemental guidance issued by individual components.

RETENTION AND DISPOSAL:

Record maintenance and disposal is in accordance with National Archives and Records Administration retention schedules, and any supplemental

guidance issued by individual components.

SYSTEM MANAGER(S) AND ADDRESS:

(1) DO: a. Director, Financial Management Division, 1500 Pennsylvania Avenue NW., Attn: 1310 G Street, 2nd floor, Washington, DC 20220.

b. OIG: Assistant Inspector General for Management, 740 15th St. NW., Suite 510, Washington, DC 20220.

c. TIGTA: Director, Finance and Accountability, 1125 15th Street NW., Suite 700A, Washington, DC 20005.

d. SIGTARP: Chief Financial Officer, 1801 L Street NW., Washington, DC 20220.

e. CDFI Fund: Deputy Director for Management/CFO, 601 13th Street NW., Suite 200 South, Washington, DC 20005.

f. FFB: Chief Financial Officer, 1500 Pennsylvania Avenue NW., South Court One, Washington, DC 20220.

g. IA: Deputy Senior Director, Business Operations, 1500 Pennsylvania Avenue NW., Room 5127A, Washington, DC 20220.

h. Treasury Forfeiture Fund: Assistant Director for Financial Management/CFO, 740 15th Street NW., Suite 700, Washington, DC 20220.

i. Treasury Franchise Fund: Director, Division of Franchise Services, Bureau of the Public Debt, 320 Avery Street, Parkersburg, WV 26101.

(2) TTB: Alcohol and Tobacco Tax and Trade Bureau: 1310 G St. NW., Washington, DC 20220.

(3) IRS: Chief Financial Officer, Internal Revenue Service, 1111 Constitution Avenue NW., Room 3013, Washington, DC 20224.

(4) BPD: Director, Division of Financial Management, Bureau of Public Debt, Avery Street Building, 320 Avery Street, Parkersburg, WV.

(5) OCC: Chief Financial Officer, Comptroller of the Currency, 400 7th Street SW., Washington, DC 20024 (6) BEP: Chief Financial Officer, Bureau of Engraving and Printing, 14th and C Streets NW., Room 113M, Washington, DC 20228.

(7) FMS: Chief Financial Officer, Financial Management Service, 3700 East West Highway, Room 106A, Hyattsville, MD 20782.

(8) Mint: Chief Financial Officer, United States Mint, 801 9th Street NW., 7th Floor, Washington, DC 20220.

(9) FinCEN: Director, P. O. Box 39, Vienna, VA 22183–0039.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in the system of records, or seeking to contest its content, may inquire in accordance with instructions pertaining to individual Treasury components appearing at 31 CFR part 1, subpart C, appendices A–M.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Individuals, private firms, other government agencies, contractors, documents submitted to or received from a budget, accounting, travel, training or other office maintaining the records in the performance of their duties.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY .010

SYSTEM NAME:

Telephone Call Detail Records—Treasury.

SYSTEM LOCATION:

Department of the Treasury, 1500 Pennsylvania Ave. NW., Washington, DC 20220. The locations at which the system is maintained by Treasury components and their associated field offices are:

(1) Departmental Offices (DO):

a. 1500 Pennsylvania Ave. NW., Washington, DC 20220.

b. Special Inspector General for the Troubled Asset Relief Program (SIGTARP), 1801 L Street NW., Washington, DC 20220.

c. Treasury Inspector General for Tax Administration (TIGTA): 1125 15th St. NW., Suite 700A, Washington, DC 20005.

(2) Alcohol and Tobacco Tax and Trade Bureau (TTB): 1310 G St. NW., Washington, DC 20220.

(3) Office of the Comptroller of the Currency (OCC): 400 7th Street SW., Washington, DC 20024.

(4) Bureau of Engraving and Printing (BEP): 14th & C Streets SW., Washington, DC 20228.

(5) Financial Crimes Enforcement Network (FinCEN): Vienna, Virginia 22182.

(6) Fiscal Service (FS): 401 14th Street SW., Washington, DC 20227.

(7) Internal Revenue Service (IRS): 1111 Constitution Avenue NW., Washington, DC 20224.

(8) United States Mint (MINT): 801 9th Street NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals (generally agency employees and contractor personnel) who make local and/or long distance calls, individuals who received telephone calls placed from or charged to agency telephones.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to the use of Department telephones to place local and/or long distance calls, whether through the Federal Telecommunications System (FTS), commercial systems, or similar systems; including voice, data, and videoconference usage; telephone calling card numbers assigned to employees; records of any charges billed to Department telephones; records relating to location of Department telephones; and the results of administrative inquiries to determine responsibility for the placement of specific local or long distance calls. Telephone calls made to any Treasury Office of Inspector General Hotline numbers are excluded from the records maintained in this system pursuant to the provisions of 5 U.S.C., Appendix 3, Section 7(b) (Inspector General Act of 1978).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1, 12 U.S.C. 93a, 12 U.S.C. 481, 5 U.S.C. 301 and 41 CFR 201–21.6.

PURPOSE(S):

The Department, in accordance with 41 CFR 201–21.6, Use of Government Telephone Systems, established the Telephone Call Detail program to enable it to analyze call detail information for verifying call usage, to determine responsibility for placement of specific long distance calls, and for detecting possible abuse of the government-provided long distance network.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information from these records may be disclosed:

(1) To representatives of the General Services Administration or the National Archives and Records Administration who are conducting records management inspections under authority of 44 U.S.C. 2904 and 2906;

(2) To employees or contractors of the agency to determine individual responsibility for telephone calls;

(3) To appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, or where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(4) To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a court order, or in connection with criminal law proceedings where relevant and necessary;

(5) To a telecommunications company providing telecommunication support to permit servicing the account;

(6) To another Federal agency to effect an interagency salary offset, or an interagency administrative offset, or to a debt collection agency for debt collection services. Mailing addresses acquired from the Internal Revenue Service may be released to debt collection agencies for collection services, but shall not be disclosed to other government agencies;

(7) To the Department of Justice for the purpose of litigating an action or seeking legal advice;

(8) In a proceeding before a court, adjudicative body, or other administrative body, before which the agency is authorized to appear when: (a) The agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to the litigation or has an interest in such litigation, and the use of such records by the agency is deemed relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(9) To a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(10) To unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114, the Merit Systems Protection Board, arbitrators, the Federal Labor Relations Authority, and other parties responsible for the administration of the Federal labor-management program for the purpose of processing any corrective actions or grievances or conducting administrative hearings or appeals or if needed in the performance of other authorized duties;

(11) To the Defense Manpower Data Center (DMDC), Department of Defense, the U.S. Postal Service, and other Federal agencies through authorized computer matching programs to identify and locate individuals who are delinquent in their repayment of debts owed to the Department, or one of its components, in order to collect a debt through salary or administrative offsets;

(12) In response to a Federal agency's request made in connection with the hiring or retention of an individual, issuance of a security clearance, license, contract, grant, or other benefit by the requesting agency, but only to the extent that the information disclosed is relevant and necessary to the requesting agency's decision on the matter.

(13) To appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department 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 the Department'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. 522a(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. 1681(f)) or the Federal Claims Collections Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Microform, electronic media, and/or hard copy media.

RETRIEVABILITY:

Records may be retrieved by: Individual name; component headquarters and field offices; by originating or terminating telephone number; telephone calling card numbers; time of day; identification number, or assigned telephone number.

SAFEGUARDS:

Protection and control of any sensitive but unclassified (SBU) records are in accordance with TD P 71–10, Department of the Treasury Security Manual, and any supplemental guidance issued by individual components.

RETENTION AND DISPOSAL:

Records are maintained in accordance with National Archives and Records Administration General Records Schedule 3. Hard copy and microform media disposed by shredding or incineration. Electronic media erased electronically.

SYSTEM MANAGER(S) AND ADDRESS:

Department of the Treasury: Official prescribing policies and practices—Director, Customer Services Infrastructure and Operations, Department of the Treasury, Room 2150, 1425 New York Avenue NW., Washington, DC 20220. The system managers for the Treasury components are:

(1) a. DO: Chief, Telecommunications Branch, Automated Systems Division, Room 1121, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

b. SIGTARP: Special Inspector General for the Troubled Asset Relief Program, 1801 L Street NW., Washington, DC 20220.

c. TIGTA: Director, Human Capital and Support Services, 1125 15th St. NW., Suite 700A, Washington, DC 20005.

(2) TTB: Alcohol and Tobacco Tax and Trade Bureau: 1310 G St. NW., Washington, DC 20220.

(3) OCC: Associate Director, Telecommunications, Systems Support Division, Office of the Comptroller of the Currency, 400 7th Street SW Washington, DC 20024.

(4) BEP: Deputy Associate Director (Chief Information Officer), Office of Information Systems, Bureau of Engraving and Printing, Room 104–24M, 14th and C Street SW., Washington, DC 20228.

(5) FS: Director, Platform Engineering Division, 3700 East West Highway, Hyattsville, MD 20782.

(6) IRS: Official prescribing policies and practices: National Director, Operations and Customer Support, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224. Office maintaining the system: Director, Detroit Computing Center, (DCC), 1300 John C. Lodge Drive, Detroit, MI 48226.

(7) Mint: Associate Director for Information Technology/CIO, 801 9th Street NW., Washington, DC 20220.

(8) FS: Official prescribing policies and practices: Assistant Commissioner (Office of Information Technology), 200 Third Street, Parkersburg, WV 26106–1328. Office maintaining the system: Division of Communication, 200 Third Street, Parkersburg, WV 26106–1328.

(9) FinCEN: Director, P.O. Box 39, Vienna, VA 22183–0039.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in the system of records, or seeking to contest its content, may inquire in accordance with instructions pertaining to individual Treasury components appearing at 31 CFR part 1, subpart C, appendices A–M.

RECORD ACCESS PROCEDURES:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in accordance with instructions pertaining to individual Treasury components appearing at 31 CFR part 1, subpart C, appendices A–M.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Telephone assignment records, call detail listings, results of administrative inquiries to individual employees, contractors or offices relating to assignment of responsibility for placement of specific long distance or local calls.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY .011

SYSTEM NAME:

Treasury Safety and Health Information Management System (SHIMS)—Treasury.

SYSTEM LOCATION:

Department of the Treasury, 1500 Pennsylvania Ave. NW., Washington, DC 20220. Other locations at which the system is maintained by Treasury components and their associated field offices are:

(1) Departmental Offices (DO):

a. 1500 Pennsylvania Ave. NW., Washington, DC 20220.

b. The Office of Inspector General (OIG): 740 15th Street NW., Washington, DC 20220.

c. Treasury Inspector General for Tax Administration (TIGTA): 1125 15th Street NW., Suite 700A, Washington, DC 20005.

d. Special Inspector General for the Troubled Asset Relief Program (SIGTARP), 1801 L Street NW., Washington, DC 20220.

e. Community Development Financial Institutions Fund (CDFI): 601 13th Street NW., Washington, DC 20005.

(2) Alcohol and Tobacco Tax and Trade Bureau (TTB): 1310 G St. NW., Washington, DC 20220.

(3) Office of the Comptroller of the currency (OCC): 400 7th Street SW., Washington, DC 20024 (4) Bureau of Engraving and Printing (BEP): 14th & C Streets SW., Washington, DC 20228.

(5) Fiscal Service (FS): 401 14th Street SW., Washington, DC 20227.

(6) Internal Revenue Service (IRS): 1111 Constitution Avenue NW., Washington, DC 20224.

(7) United States Mint (MINT): 801 9th Street NW., Washington, DC 20220.

(9) Financial Crimes Enforcement Network (FinCEN), Vienna, VA 22183–0039.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and past Treasury employees and contractors who are injured on Department of the Treasury property or while in the performance of their duties offsite. Members of the public who are injured on Department of the Treasury property are also included in the system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system pertain to medical injuries and occupational illnesses of employees which include social security numbers, full names, job titles, government and home addresses (city, state, zip code), home telephone numbers, work telephone numbers, work shifts, location codes, and gender. Mishap information on environmental incidents, vehicle accidents, property losses and tort claims are also included. In addition, results of investigations, corrective actions, supervisory information, safety representatives' names, data as to chemicals used, processes affected, causes of losses, etc. are also included. Records relating to contractors include full name, job title, work addresses (city, state, zip code), work telephone number, location codes, and gender. Records pertaining to a member of the public include full name, home address (city, state, zip code), home telephone number, location codes and gender. (Official compensation claim file, maintained by the Department of Labor's Office of Workers' Compensation Programs (OWCP) is part of that agency's system of records and not covered by this notice.)

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Executive Order 12196, section 1–2.

PURPOSE(S):

This system of records supports the development and maintenance of a Treasury-wide incident tracking and reporting system and will make it possible to streamline a cumbersome paper process. Current web technology will be employed and facilitate obtaining real-time data and reports related to injuries and illnesses. As an enterprise system for the Department and its component bureaus, incidents analyses can be performed instantly to affect a more immediate implementation of corrective actions and to prevent future occurrences. Information pertaining to past and all current employees and contractors injured on Treasury property or while in the performance of their duties offsite, as well as members of the public injured while on Federal property, will be gathered and stored in SIMIS. This data will be used for analytical purposes such as trend analysis, and the forecasting/projecting of incidents. The data will be used to generate graphical reports resulting from the analyses.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Disclose pertinent information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(3) Disclose information to the Office of Workers' Compensation Programs, Department of Labor, which is responsible for the administration of the Federal Employees' Worker Compensation Act (FECA);

(4) Disclose information to a Federal, State, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(5) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which the Department of the Treasury (agency) is authorized to appear when: (a) The agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or (d) the

United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(6) Disclose information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(7) Disclose information to a contractor for the purpose of processing administrative records and/or compiling, organizing, analyzing, programming, or otherwise refining records subject to the same limitations applicable to U.S. Department of the Treasury officers and employees under the Privacy Act;

(8) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a court order where relevant or potentially relevant to a proceeding;

(9) Disclose information to unions recognized as exclusive bargaining representatives under 5 U.S.C. chapter 71, arbitrators, and other parties responsible for the administration of the Federal labor-management program if needed in the performance of their authorized duties;

(10) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, the Federal Labor Relations Authority, and other parties responsible for the administration of the Federal labor management program for the purpose of processing any corrective actions or grievances or conducting administrative hearings or appeals, or if needed in the performance of other authorized duties;

(11) Disclose information to a Federal, State, or local public health service agency as required by applicable law, concerning individuals who have contracted or who have been exposed to certain communicable diseases or conditions. Such information is used to prevent further outbreak of the disease or condition;

(12) Disclose information to representatives of the General Services Administration (GSA) or the National Archives and Records Administration (NARA) who are conducting records management inspections under authority of 44 U.S.C. 2904 and 2906.

(13) To appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department 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 the Department'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:

Maintained in hardcopy and electronic media.

RETRIEVABILITY:

Records can be retrieved by name, or by categories listed above under ''Categories of records in the system.''

SAFEGUARDS:

Protection and control of any sensitive but unclassified (SBU) records are in accordance with TD P 7110, Department of the Treasury Security Manual. The hardcopy files and electronic media are secured in locked rooms. Access to the records is available only to employees responsible for the management of the system and/or employees of program offices who have a need for such information and have been subject to a background check and/or security clearance.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the appropriate National Archives and Records Administration General Records Schedule No. 1.

SYSTEM MANAGER(S) AND ADDRESS:

Department of the Treasury official prescribing policies and practices: SHIMS Program Manager, Office of Environment, Safety, and Health, Department of the Treasury, Washington, DC 20220. The system managers for the Treasury components are:

(1) DO: a. Program Manager, Office of Environment, Safety, and Health, Room 6000 Annex, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

b. OIG: Safety and Occupational Health Manager, 740 15th Street NW., Washington, DC 20220.

c. TIGTA: Director, Human Capital and Support Services, 1125 15th Street NW., Suite 700A, Washington, DC 20005.

d. CDFI: Safety and Occupational Health Manager, 601 13th Street NW., Washington, DC 20005.

(2) TTB: Alcohol and Tobacco Tax and Trade Bureau: 1310 G St. NW., Washington, DC 20220.

(3) OCC: Safety and Occupational Health Manager, 400 7th Street SW., Washington, DC 20024; 400 7th Street SW., Washington, DC 20024.

(4) BEP: Safety and Occupational Health Manager, 14th & C Streets SW., Washington, DC 20228.

(5) FS: Safety and Occupational Health Manager, PG 3700 East-West Highway, Hyattsville, MD 20782.

(6) IRS: Safety and Occupational Health Manager, 1111 Constitution Avenue NW., Washington, DC 20224.

(7) MINT: Designated Safety and Health Official, 801 9th Street NW., Washington, DC 20220.

(9) FinCEN: Safety and Occupational Health Manager, P.O. Box 39, Vienna, VA 22183–0039.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in the system of records, or seeking to contest its content, may inquire in accordance with instructions pertaining to individual Treasury components appearing at 31 CFR part 1, subpart C, appendices, A–L.

RECORD ACCESS PROCEDURES:

See ''Notification procedures'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedures'' above.

RECORD SOURCE CATEGORIES:

Information is obtained from current Treasury employees, contractors, members of the public, witnesses, medical providers, and relevant industry experts.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY .012

SYSTEM NAME:

Fiscal Service Public Key Infrastructure—Treasury.

SYSTEM LOCATION:

The system of records is located at:

(1) The Fiscal Service (FS), U.S. Department of the Treasury, in Parkersburg, WV, and,

(2) The Fiscal Service (FS), U.S. Department of the Treasury, Washington, DC, and Hyattsville, MD. The system managers maintain the system location of these records.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Digital certificates may be issued to any of the following individuals: A Federal agency certifying officer who authorizes vouchers for payment; Federal employees who approve the grantees' accounts; an individual authorized by a state or grantee organization to conduct business with the Fiscal Service; employees of the Fiscal Service; fiscal agents; and contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains information needed to establish accountability and audit control of digital certificates. It also contains records that are needed to authorize an individual's access to a Treasury network. Depending on the service(s) requested by the customer, information may also include:

Personal identifiers—name, including previous name used, and aliases; organization, employer name and address; Social Security number, Tax Identification Number; physical and electronic addresses; telephone, fax, and pager numbers; bank account information (name, type, account number, routing/transit number); Federal-issued photograph ID; driver's license information or state ID information (number, state, and expiration date); military ID information (number, branch, expiration date); or passport/visa information (number, expiration date, and issuing country).

Authentication aids—personal identification number, password, account number, shared-secret identifier, digitized signature, other unique identifier.

The system contains records on public key data related to the customer, including the creation, renewal, replacement or revocation of digital certificates, including evidence provided by applicants for proof of identity and authority, sources used to verify an applicant's identity and authority, and the certificates issued, denied and revoked, including reasons for denial and revocation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 31 U.S.C. 321, and the Government Paperwork Elimination Act, Pub. L. 105–277.

PURPOSES:

We are establishing the Fiscal Service Public Key Infrastructure System to:

(1) Use electronic transactions and authentication techniques in accordance with the Government Paperwork Elimination Act;

(2) Facilitate transactions involving the transfer of information, the transfer of funds, or where parties commit to actions or contracts that may give rise to financial or legal liability, where the information is protected under the Privacy Act of 1974, as amended;

(3) Maintain an electronic system to facilitate secure, on-line communication between Federal automated systems, and between federal employees or contractors, by using digital signature technologies to authenticate and verify identity;

(4) Provide mechanisms for non-repudiation of personal identification and access to Treasury systems including, but not limited to SPS and ASAP; and

(5) Maintain records relating to the issuance of digital certificates utilizing public key cryptography to employees and contractors for purpose of the transmission of sensitive electronic material that requires protection.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed to:

(1) Congressional offices in response to an inquiry made at the request of the individual to whom the record pertains;

(2) Appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law or regulation;

(3) A court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a court order;

(4) A Federal, State, local or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's, hiring or retention of an individual, or issuance of a security clearance, license, contract, grant or other benefit;

(5) Agents or contractors who have been engaged to assist the Department in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity;

(6) The Department of Justice when seeking legal advice or when (a) the Department of the Treasury or (b) the disclosing agency, or (c) any employee of the disclosing agency in his or her official capacity, or (d) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (e) the United States, where the disclosing agency determines that litigation is likely to affect the disclosing agency, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation; and

(7) Representatives of the National Archives and Records Administration (NARA) who are conducting records management inspections under authority of 44 U.S.C. 2904 and 2906.

(8) To appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department 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 the Department'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 electronic media, multiple client-server platforms that are backed-up to magnetic tape or other storage media, and/or hard copy.

RETRIEVABILITY:

Records may be retrieved by name, alias name, Social Security number, Tax Identification Number, account number, or other unique identifier.

SAFEGUARDS:

These records are maintained in controlled access areas. Identification cards are verified to ensure that only authorized personnel are present.

Electronic records are protected by restricted access procedures, including the use of passwords and sign-on protocols which are periodically changed. Only employees whose official duties require access are allowed to view, administer, and control these records. Copies of records maintained on computer have the same limited access as paper records.

RETENTION AND DISPOSAL:

Records are maintained in accordance with National Archives and Records Administration retention schedules. Paper and microform records ready for disposal are destroyed by shredding or maceration. Records in electronic media are electronically erased using accepted techniques.

SYSTEM MANAGERS AND ADDRESSES:

(1) Assistant Commissioner, Office of Information Technology, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26101, and,

(2) Assistant Commissioner, Information Resources, and Chief Information Officer, Financial Management Service, 3700 East West Highway, Hyattsville, MD 20782.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in the system of records, or seeking to contest its content, may inquire in accordance with instructions pertaining to individual Treasury components appearing at 31 CFR part 1, subpart C: Appendix I for records within the custody of the Bureau of the Public Debt, and, Appendix G for records within the custody of the Financial Management Service.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

The information contained in this system is provided by or verified by the subject individual of the record, as well as federal and non-federal sources such as private employers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY .013

SYSTEM NAME:

Department of the Treasury Civil Rights Complaints and Compliance Review Files.

SYSTEM LOCATION:

These records are located in the Department of the Treasury's (Treasury) Office of Civil Rights and Diversity (OCRD), the Office of the General Counsel, and any other office within a Treasury bureau where a complaint is filed or where the action arose.

The locations at which the system is maintained are:

(1) a. Departmental Offices (DO): 1500 Pennsylvania Ave. NW., Washington, DC 20220.

b. The Office of Inspector General (OIG): 740 15th Street NW., Washington, DC 20220.

c. Treasury Inspector General for Tax Administration (TIGTA): 1125 15th Street NW., Suite 700A, Washington, DC 20005.

d. Special Inspector General for the Troubled Asset Relief Program (SIGTARP), 1801 L Street NW., Washington, DC 20220.

(2) Alcohol and Tobacco Tax and Trade Bureau (TTB): 1310 G St. NW., Washington, DC 20220.

(3) Office of the Comptroller of the Currency (OCC): 400 7th Street SW., Washington, DC 20024.

(4) Bureau of Engraving and Printing (BEP): 14th & C Streets SW., Washington, DC 20228.

(5) Fiscal Service (FS): 401 14th Street SW., Washington, DC 20227.

(6) Internal Revenue Service (IRS): 1111 Constitution Avenue NW., Washington, DC 20224.

(7) United States Mint (MINT): 801 9th Street NW., Washington, DC 20220.

(8) FS: 999 E Street NW., Washington, DC 20239.

(9) Financial Crimes Enforcement Network (FinCEN), Vienna, VA 22183–0039.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Covered individuals include persons who file complaints alleging discrimination or violation of their rights under the statutes identified below (Authority for Maintenance) and covered entities (*e.g.,* recipients of financial assistance from Treasury such as grantees and sub-grantees), whether individuals, organizations or institutions, investigated by OCRD as a result of allegations of discrimination or through compliance reviews conducted by OCRD. Covered individuals also include persons who submit correspondence to OCRD related to other compliance activities (*e.g.,* outreach and public education), and other correspondence unrelated to a complaint or review and requiring response by OCRD.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system encompasses a variety of records having to do with complaints, compliance reviews, and correspondence. The complaint files and log include complaint allegations, information gathered during the complaint investigation, findings and results of the investigation, and correspondence relating to the investigation, as well as status information for all complaints.

Equivalent types of information are maintained for reviews and correspondence activities (namely information gathered, findings, results, correspondence and status).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title VI of the 1964 Civil Rights Act of 1964; sections 504 and 508 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; and Title IX of the Education Amendments Act of 1972.

PURPOSE(S):

The complaint files and other records will be used to enforce and ensure compliance with the legal authorities listed above. Treasury uses the information in this system to investigate complaints and to obtain compliance with civil rights laws.

The system is used for the investigation of complaints and in reviewing recipients of Treasury financial assistance to determine if these programs are in compliance with the Federal laws which prohibit discrimination on the basis of race, color, national origin, sex, age, and disability. In addition, the system contains case files developed in investigating complaints and in reviewing actions within Treasury to determine if its conducted programs and activities are in compliance with the Federal laws. The system also contains annual and bi-annual statistical data submitted to and used by the OCRD in monitoring the compliance status of recipients of Department of the Treasury financial assistance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to disclose pertinent information to:

(1) Appropriate Federal agencies responsible for a civil rights action or, prosecuting a violation of, or enforcing, or implementing, a statute, rule, regulation, or order, where Treasury becomes aware of an indication of a potential violation of civil or criminal law or regulation, rule or order.

(2) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(3) Another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Federal Government is a party to the judicial or administrative proceeding. In those cases where the Federal Government is not a party to the proceeding, records may be disclosed if a subpoena has been signed by a court of competent jurisdiction.

(4) The National Archives and Records Administration (''NARA'') for use in its records management inspections and its role as an Archivist.

(5) The United States Department of Justice for the purpose of representing or providing legal advice to Treasury in a proceeding before a court, adjudicative body, or other administrative body before which Treasury is authorized to appear, when such proceeding involves:

(A) Treasury or any component thereof;

(B) Any employee of Treasury in his or her official capacity;

(C) Any employee of Treasury in his or her individual capacity where the Department of Justice or Treasury has agreed to represent the employee;

(D) The United States, when Treasury determines that litigation is likely to affect Treasury or any of its components.

(6) Contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for Treasury, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to Treasury officers and employees.

(7) Appropriate agencies, entities, and persons when: (a) Treasury suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) Treasury has determined that as a result of the suspected or confirmed compromise that 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 Treasury 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 Treasury'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:

Paper records, file folders and/or electronic media.

RETRIEVABILITY:

In the case of administrative complaints, records are indexed by the complainant's name. In the case of compliance reviews, records are indexed by the name of the recipient of financial assistance.

SAFEGUARDS:

The civil rights complaint and compliance file system will conform to applicable law and policy governing the privacy and security of Federal records. These include but are not limited to the Privacy Act of 1984, and the Paperwork Reduction Act of 1995. Only authorized users have access to the records in the system. Specific access is structured around need and is determined by the person's role in the organization.

Printed materials are filed in secure cabinets in secure Federal buildings with access based on need.

RETENTION AND DISPOSAL:

Documents related to complaints and reviews are retained at OCRD for three years from the date the complaint is closed and then are archived at the National Archives and Records Administration for 15 years. Correspondence is retained for one year following the end of the fiscal year in which processed.

SYSTEM MANAGER(S) AND ADDRESS:

Department of the Treasury: Official prescribing policies and practices: Associate Chief Human Capital Officer for Civil Rights and Diversity.

The system managers for the Treasury components are:

(1) Treasury: OCRD, External Civil Rights Program Manager, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

(2) a. DO: Office of EEO, EEO Director, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

b. OIG: EEO and Diversity Manager, 740 15th Street NW., Suite 500, Washington, DC 20220.

c. TIGTA: EEO Program Manager, 1125 15th Street NW., Suite 700A, Washington, DC 20005.

(d) SIGTARP: EEO Program Manager, 1801 L Street NW., 3rd Floor, Washington, DC 20220.

(3) TTB: EEO Officer, 1310 G Street NW., Suite 300W, Washington, DC 20220.

(4) OCC: Director, Workplace Fairness and Equal Opportunity, 400 7th Street SW., Washington, DC 20024.

(5) BEP: Chief, Office of Equal Opportunity and Diversity Management, 14th and C Street SW., Room 639–17, Washington, DC 20228.

(6) FS: EEO Officer, PG Center, Building 2, Room 137, 3700 East-West Highway, Hyattsville, MD 20782.

(7) IRS: Director, Civil Rights Division, 1111 Constitution Avenue NW., Suite 2219, Washington, DC 20224.

(8) U.S. Mint: Chief, Chief, Diversity Management and Civil Rights, 801 9th Street NW., 3rd Floor, Washington, DC 20220.

(9) FS: EEO Officer, 200 3rd Street, Room 102, Parkersburg, WV 26106.

(10) FinCEN: Chief, Outreach and Workplace Solutions, 2070 Chain Bridge Road, Suite 200, Vienna, VA 22182.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendices A–M. Requests for information and specific guidance on where to send requests for records may be addressed to: Privacy Act Request, DO, Director, Disclosure Services Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

Information is provided by Treasury employees, complainants and covered entities.

RECORDS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Certain records in this system are exempt from 5 U.S.C. 552a(c)(3), (d)(1), (2), (3), and (4), (e)(1), (e)(4)(G), (H),and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). See 31 CFR 1.36. Show citation box

TREASURY .014

SYSTEM NAME:

Department of the Treasury SharePoint User Profile Services—Treasury/DO.

SYSTEM LOCATION:

These records are located in the Department of the Treasury's (Treasury) Office of Privacy, Transparency, and Records, and any other office within a

Treasury bureau where the data was entered on the site. The locations at which the system is maintained are:

(1) a. Departmental Offices: 1500 Pennsylvania Ave. NW., Washington, DC 20220.

b. The Office of Inspector General: 740 15th Street NW., Washington, DC 20220.

c. Treasury Inspector General for Tax Administration: 1125 15th Street NW., Suite 700A, Washington, DC 20005.

d. Special Inspector General for the Troubled Asset Relief Program (SIGTARP), 1801 L Street NW., Washington, DC 20220.

(2) Alcohol and Tobacco Tax and Trade Bureau: 1310 G Street NW., Washington, DC 20220.

(3) Office of the Comptroller of the Currency: 400 7th St. SW., Washington, DC 20024.

(4) Bureau of Engraving and Printing: 14th & C Streets SW., Washington, DC 20228.

(5) Fiscal Service: 401 14th Street SW., Washington, DC 20227.

(6) Internal Revenue Service: 1111 Constitution Avenue NW., Washington, DC 20224.

(7) United States Mint: 801 9th Street NW., Washington, DC 20220.

(8) Financial Crimes Enforcement Network: 2070 Chain Bridge Road, Vienna, VA 22183.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Treasury employees, detailees, contractors, and interns.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; name of department/office/bureau; job title; office work and cell phone numbers; work email address; office fax number; office building location; assistant/alternate point of contact (optional); phonetic name (optional); skills/experience (optional); educational background (optional); status message (optional), and photograph (optional).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

The purpose of this system is to create a central platform through which Treasury and its bureaus' employees, detailees, contractors, and interns may collaborate and exchange information in order to increase operational efficiency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose pertinent information to appropriate federal, foreign, state, local, tribal, or other public authorities or self-regulatory organizations responsible for investigating or prosecuting the violations of, enforcing, or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a court order, or in connection with criminal law proceedings or mediation/alternative dispute resolution;

(3) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(4) Disclose information to the United States Department of Justice for the purpose of representing or providing legal advice to Treasury in a proceeding before a court, adjudicative body, or other administrative body before which Treasury is authorized to appear, when such proceeding involves:

(A) Treasury or any component thereof;

(B) Any employee of Treasury in his or her official capacity;

(C) Any employee of Treasury in his or her individual capacity where the Department of Justice or Treasury has agreed to represent the employee;

(D) The United States, when Treasury determines that litigation is likely to affect Treasury or any of its components.

(5) Disclose information to contractors and their agents, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for Treasury, when necessary to accomplish an agency function related to this system of records;

(6) Provide information to appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department 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 the Department'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 stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The electronic records are stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

Records may be retrieved by name; department; name of office/bureau; job title; manager/supervisor; office work and cell phone; work email address; office fax number; office building location; assistant/alternate point of contact; phonetic name; skills/experience; educational background; and status message.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable Treasury automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the type and amount of data is governed by privilege management software and policies developed and enforced by federal government personnel and are determined by specific roles and responsibilities. Procedural and physical safeguards, such as personal accountability, will be utilized. Certified system management personnel are responsible for maintaining the system integrity and the data confidentiality.

RETENTION AND DISPOSAL:

To the extent there are records identified, they will be destroyed in accordance with the appropriate disposition schedule approved by the National Archives and Records Administration. Non-record material will be removed when no longer deemed necessary by the system owner.

SYSTEM MANAGER AND ADDRESS:

a. Deputy Assistant Secretary for Information Technology and Chief Information Officer, 1500 Pennsylvania Avenue NW., Washington, DC 20020;

b. Deputy Assistant Secretary for Privacy, Transparency, and Records, 1500 Pennsylvania Avenue NW., Washington, DC 20020.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, Appendices A–M. Requests for information and specific guidance on where to send requests for records may be addressed to: Privacy Act Request, DO, Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Records are obtained from Active Directory, Treasury employees, detailees, contractors, and interns.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY .015

SYSTEM NAME:

General Information Technology Access Account Records—Treasury.

SYSTEM LOCATION:

The records are located at Main Treasury and in other Treasury bureaus and offices, both in Washington, DC and at field locations as follows:

(1) Departmental Offices: 1500 Pennsylvania Ave. NW., Washington, DC 20220;

(2) Alcohol and Tobacco Tax and Trade Bureau: 1310 G St. NW., Washington, DC 20220.

(3) Office of the Comptroller of the Currency: Constitution Center, 400 Seventh St. SW., Washington, DC 20024;

(4) Fiscal Service: Liberty Center Building, 401 14th St. SW., Washington, DC 20227;

(5) Internal Revenue Service: 1111 Constitution Ave. NW., Washington, DC 20224;

(6) United States Mint: 801 Ninth St. NW., Washington, DC 20220;

(7) Bureau of Engraving and Printing: Eastern Currency Facility, 14th and C Streets SW., Washington, DC 20228 and Western Currency Facility, 9000 Blue Mound Rd., Fort Worth, TX 76131;

(8) Financial Crimes Enforcement Network: Vienna, VA 22183;

(9) Special Inspector General for the Troubled Asset Relief Program (SIGTARP): 1801 L St. NW., Washington, DC 20220;

(10) Office of Inspector General: 740 15th St. NW., Washington, DC 20220; and

(11) Office of the Treasury Inspector General for Tax Administration: 1125 15th St. NW., Suite 700A, Washington, DC 20005.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

- All persons who are authorized to access Treasury information technology resources, including employees, contractors, grantees, fiscal agents, financial agents, interns, detailees, and any lawfully designated representative of the above as well as representatives of federal, state, territorial, tribal, local, international, or foreign government agencies or entities, in furtherance of the Treasury mission.
- Individuals who serve on Treasury boards and committees;
- Individuals who provide personal information in order to facilitate access to Treasury information technology resources;
- Industry points-of-contact providing business contact information for conducting business with government agencies;
- Industry points-of-contact emergency contact information in case of an injury or medical notification;
- Individuals who voluntarily join a Treasury-owned and operated web portal for collaboration purposes; and
- Individuals who request access but are denied, or who have had their access to Treasury information systems revoked.

CATEGORIES OF RECORDS IN THE SYSTEM:

- Social Security number;
- Business name;
- Job title;
- Business contact information;
- Personal contact information;
- Pager numbers;
- Others phone numbers or contact information provided by individuals while on travel or otherwise away from the office or home;
- Citizenship;
- Level of access;
- Home addresses;
- Business addresses;
- Personal and business electronic mail addresses of senders and recipients;
- Justification for access to Treasury computers, networks, or systems;
- Verification of training requirements or other prerequisite requirements for access to Treasury computers, networks, or systems;
- Records on the authentication of a request for access to a Treasury IT resource, including names, phone numbers of other contacts, and positions or business/organizational affiliations and titles of individuals who can verify that the individual seeking access has a need for access to a Treasury IT resource.
- Records on access to Treasury computers and networks including user IDs and passwords;
- Registration numbers or IDs associated with Treasury information technology resources;
- Date and time of access to Treasury IT resources;
- Tax returns and tax return information;
- Logs of activity when accessing and using Treasury information technology resources;
- Internet Protocol address of visitors to Treasury Web sites (a unique number identifying the computer from which a member of the public or others access Treasury IT resources); and
- Logs of individuals' internet activity while using Treasury IT resources.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101; EO 9397, as amended by EO 13487; and 44 U.S.C. 3534.

PURPOSES:

This system will allow Treasury to collect a discrete set of personally identifiable information in order to allow authorized individuals access to, or interactions with, Treasury information technology resources, and allow Treasury to track use of its information technology resources. The system enables Treasury to maintain: account information required for approved access to information technology; lists of individuals who are appropriate organizational points of contact; and lists of individuals who are emergency points of contact. The system will also enable Treasury to provide individuals access to certain meetings and programs where additional information is required and, where appropriate, facilitate collaboration by allowing individuals in the same operational program to share information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of tax returns and tax return information may be made only as allowed by 26 U.S.C. 6103. In addition to those disclosures generally permitted under 5 U.S.C. 552a (b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside Treasury as a routine use pursuant to 5 U.S.C. 552a (b) (3), as follows:

A. To the Department of Justice (including United States Attorneys' Offices) or other federal agencies conducting litigation or in proceedings before any court or adjudicative or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. Treasury or any component thereof;

2. Any employee of Treasury in his/her official capacity;

3. Any employee of Treasury in his/her individual capacity where the Department of Justice or Treasury has agreed to represent the employee; or

4. The United States or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. Treasury suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. The disclosure made to such agencies, entities, and persons as is reasonably necessary to assist in connection with Treasury's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, fiscal agent, financial agents, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for Treasury, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to Treasury officers and employees.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To sponsors, employers, contractors, facility operators, grantees, experts, fiscal agents, financial agents, and consultants in connection with establishing an access account for an individual or maintaining appropriate points of contact and when necessary to accomplish a Treasury mission function or objective related to this system of records.

I. To other individuals in the same operational program supported by an information technology resource, where appropriate notice to the individual has been made that his or her contact information will be shared with other members of the same operational program in order to facilitate collaboration.

J. To federal agencies such as the Office of Personnel Management, the Merit Systems Protection Board, the Office of Management and Budget, the Federal Labor Relations Authority, the Government Accountability Office, and the Equal Employment Opportunity Commission in the fulfillment of these agencies' official duties.

K. To international, federal, state, local, tribal, or private entities for the purpose of the regular exchange of business contact information in order to facilitate collaboration for official business.

L. To the news media and the public, with the approval of the Senior Agency Official for Privacy, or her designee, in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of Treasury or is necessary to demonstrate the accountability of Treasury's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are on paper and/or in digital or other electronic form. Digital and other electronic images are stored on a storage area network in a secured environment. Records, whether paper or electronic, may be stored at the Treasury Headquarters or at the bureau or office level.

RETRIEVABILITY:

Information may be retrieved, sorted, and/or searched by an identification number assigned by computer, by facility, by business affiliation, email address, or by the name of the individual, or other employee data fields previously identified in this System of Records Notice.

SAFEGUARDS:

Information in this system is safeguarded in accordance with applicable laws, rules and policies, including Treasury Directive 85–01, Department of the Treasury Information Technology (IT) Security Program. Further, Treasury .015—General Information Technology Access Account Records system of records security protocols will meet multiple National Institute of Standards and Technology security standards from authentication to certification and authorization. Records in the Treasury .015—General Information Technology Access Account Records system of records will be maintained in a secure, password protected electronic system that will utilize security hardware and software to include: Multiple firewalls, active intruder detection, and role-based access controls. Additional safeguards will vary by component and program. All records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include restricting access to authorized personnel who have a ''need to know,'' using locks, and password protection identification features. Treasury file areas are locked after normal duty hours and the facilities are protected by security personnel who monitor access to and egress from Treasury facilities.

RETENTION AND DISPOSAL:

Records are securely retained and disposed of in accordance with the National Archives and Records Administration's General Records Schedule 24, section 6, ''User Identification, Profiles, Authorizations, and Password Files.'' Inactive records will be destroyed or deleted 6 years after the user account is terminated or password is altered, or when no longer needed for investigative or security purposes, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

DASIT/CIO, Department of the Treasury, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing, in accordance with Treasury's Privacy Act regulations (located at 31 CFR 1.26), to the Freedom of Information Act (FOIA) and Transparency Liaison, whose contact information can be found at *http://www.treasury.gov/FOIA/Pages/index.aspx* under ''FOIA Requester Service Centers and FOIA Liaison.'' If an individual believes more than one bureau maintains Privacy Act records concerning him or her, the individual may submit the request to the Office of Privacy, Transparency, and Records, FOIA and Transparency, Department of the Treasury, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

No specific form is required, but a request must be written and:

- Be signed and either notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization;
- State that the request is made pursuant to the FOIA and/or Privacy Act disclosure regulations;
- Include information that will enable the processing office to determine the fee category of the user;
- Addressed to the bureau that maintains the record (in order for a request to be properly received by the Department, the request must be received in the appropriate bureau's disclosure office);
- Reasonably describe the records;
- Give the address where the determination letter is to be sent;
- State whether or not the requester wishes to inspect the records or have a copy made without first inspecting them; and
- Include a firm agreement from the requester to pay fees for search, duplication, or review, as appropriate. In the absence of a firm agreement to pay, the requester may submit a request for a waiver or reduction of fees, along with justification of how such a waiver request meets the criteria for a waiver or reduction of fees found in the FOIA statute at 5 U.S.C. 552(a)(4)(A)(iii).

You may also submit your request online at *https://rdgw.treasury.gov/foia/pages/gofoia.aspx* and call 1–202–622–0930 with questions.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Information contained in this system is obtained from affected individuals, organizations, and facilities; public source data; other government agencies; and information already in other Treasury records systems.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY .016

SYSTEM NAME:

Reasonable Accommodations Records—Treasury.

SYSTEM LOCATION:

Department of the Treasury, 1500 Pennsylvania Ave. NW., Washington, DC 20220. These records are located in personnel, EEO, or designated offices in the bureaus in which the reasonable accommodations were filed. The locations at which the system is maintained are:

(1) *Departmental Offices:* 1500 Pennsylvania Ave. NW., Washington, DC 20220;

(2) *Alcohol and Tobacco Tax and Trade Bureau:* 1310 G St. NW., Washington, DC 20220.

(3) *Office of the Comptroller of the Currency:* Constitution Center, 400 Seventh St. SW., Washington, DC 20024;

(4) *Fiscal Service:* Liberty Center Building, 401 14th St. SW., Washington, DC 20227;

(5) *Internal Revenue Service:* 1111 Constitution Ave. NW., Washington, DC 20224;

(6) *United States Mint:* 801 Ninth St. NW., Washington, DC 20220;

(7) *Bureau of Engraving and Printing:* Eastern Currency Facility, 14th and C Streets SW., Washington, DC 20228 and Western Currency Facility, 9000 Blue Mound Rd., Fort Worth, TX 76131;

(8) *Financial Crimes Enforcement Network:* P.O. Box 39, Vienna, VA 22183–0039;

(9) *Special Inspector General for the Troubled Asset Relief Program (SIGTARP):* 1801 L St. NW., Washington, DC 20220;

(10) *Office of Inspector General:* 740 15th St. NW., Washington, DC 20220; and

(11) Office of the Treasury Inspector General for Tax Administration: 1125 15th St. NW., Suite 700A, Washington, DC 20005.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include applicants for employment and employees who request or receive reasonable accommodations under the Rehabilitation Act of 1973 or ADAAA, or leave under the Family and Medical Leave Act of 1993 (FMLA). This also includes participants in Treasury programs and activities, visitors at Treasury facilities, authorized individuals or representatives (*e.g.,* family member or attorney) who request a reasonable accommodation on behalf of an applicant for employment or employee, as well as former employees and members of the public who request or receive a reasonable accommodation or leave under the FMLA during their employment with Treasury or when visiting a Treasury facility.

CATEGORIES OF RECORDS IN THE SYSTEM:

- Requestor's status (applicant or anybody who identifies or recognizes the need for an accommodation at a Treasury facility);
- Name of the person who requires the accommodation;
- Address, phone, and email of the person who requires accommodations;
- Date of request;
- Meeting or other event for which request was made (room number, date and time of meeting/event);
- Program or activity for which request was made;
- Jobs (occupational series, grade level, and bureau or office) for which reasonable accommodation was requested;
- Information concerning the nature of the disability and the need for accommodation, including appropriate medical documentation when the disability and/or need for accommodation is not obvious or the accommodation cannot be easily provided with little effort or expense; and
- Medical documentation supporting the reasonable accommodation request should be kept in a confidential file separate and apart from the requestor's Official Personnel Folder, Employee Performance File, or drop file.

Information concerning the nature of the disability and need for accommodation includes:

- Medical documentation provided by the requester;
- Type(s) of accommodation(s) requested;
- Expense(s) associated with the requested accommodation;
- Whether the request came from someone planning to visit a Treasury facility;
- Whether an accommodation requested was pre-employment, during employment, or post-employment with the Treasury or bureau;
- How the requested accommodation would assist in job performance,

participation in a Treasury program or activity, or attendance at a Treasury-sponsored meeting or event;

- The amount of time taken to process the request;
- Whether the request was granted or denied and reason; and
- The sources of technical assistance consulted in trying to identify a possible reasonable accommodation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Rehabilitation Act of 1973, §§ 501 and 504; ADAAA; Executive Order 13164 (July 28, 2000); and Executive Order 13548 (July 26, 2010).

PURPOSE(S):

The purpose of this system is to allow Treasury and its bureaus to collect and maintain records on individuals who seek accommodations to facilitate their participation in a Treasury program or activity, their attendance at a meeting, training, conference or event at a Treasury facility or sponsored by Treasury, applicants for employment who have disabilities, and employees with disabilities who request or receive reasonable accommodation by the Department as the Rehabilitation Act of 1973 and the ADAAA require. Another purpose of this system is to track and report the processing of requests for reasonable accommodation Treasury-wide to comply with applicable laws and regulations and to preserve and maintain the confidentiality of information provided in support of the accommodation request.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be disclosed from the system as follows:

A. To medical personnel to meet a bona fide medical emergency;

B. To another federal agency, a state or local agency, a court, or a party in litigation before a court or in an administrative proceeding being conducted by a federal or state or local agency when the Government is a party to the judicial or administrative proceeding;

C. To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual; and

D. To an authorized appeal grievance examiner, formal complaints examiner, administrative judge, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint or appeal filed by an employee;

E. To the National Archives and Records Administration (NARA) or other federal government agencies pursuant to general records management and records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906;

F. To an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion on such matters as settlement, plea bargaining, or in information discovery proceedings;

G. To contractors, grantees, experts, consultants, students, interns, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the federal government, when necessary to accomplish an agency function related to this system of records; and

H. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of an individual who is the subject of the record.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are on paper and/or in digital or other electronic form. Digital and other electronic images are stored on a storage area network in a secured environment. Records, whether paper or electronic, may be stored in a separate, secure location at the Treasury Headquarters or at the bureau or office level.

RETRIEVABILITY:

Records may be retrieved by name of the requester, employing bureau or office, or any unique identifying number assigned to the request if applicable.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable Treasury automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

All medical information, including information about functional limitations and reasonable accommodation needs obtained in connection with a request for reasonable accommodation must be kept confidential and shall be maintained in secure files separate from the Official Personnel Folder, Employee Performance File, or drop file. Additionally, employees who obtain or receive such information are strictly bound by these confidentiality requirements. Whenever medical information is disclosed, the individual disclosing the information must inform the information recipients regarding the confidentiality requirements that the recipient must continue to apply to the information after it is received.

RETENTION AND DISPOSAL:

In accordance with NARA General Records Schedule (GRS) 1 Section 24 ''Reasonable Accommodation Request Records'' this schedule includes all requests for reasonable accommodation and/or assistive technology devices and services offered through the agency or the Computer/Electronic Accommodation Program that are made by or on behalf of applicants, current or former employees. Also included are medical records, supporting notes and documentation, as well as procedures and records related to processing, deciding, implementing, and tracking requests for reasonable accommodation(s). Disposition of records follows:

A. General Files—Destroy three years after supersession or when no longer needed for reference, whichever is later. (N1–GRS–04–2 item 1a);

B. Employee Case Files—Destroy three years after employee separation from the agency or all appeals are concluded, whichever is later. (N1–GRS–04–2 item 1b);

C. Supplemental Files—Destroy three years after end of fiscal year in which accommodation is decided or all appeals are concluded, whichever is later. (N1–GRS–04–2 item 1c). Note: These records are neither part of an employee's OPF nor part of a supervisor's unofficial personnel file;

D. Tracking System—Delete/destroy three years after compliance report is filed or when no longer needed for reference. (N1–GRS–04–2 item 1d).

SYSTEM MANAGER(S) AND ADDRESS:

EEO Program Manager (202–622–0341), Office of Civil Rights and Diversity, Department of the Treasury, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

Records pertaining to reasonable accommodations filed at the Departmental level: EEO Program Manager (202–622–0341), Office of Civil

Rights and Diversity, Department of the Treasury, 1550 Pennsylvania Ave. NW., Washington, DC 20220. The locations at which the system is maintained by Treasury's bureaus are:

(1) *Departmental Offices:* 1500 Pennsylvania Ave. NW., Washington, DC 20220;

(2) *Alcohol and Tobacco Tax and Trade Bureau:* 1310 G St. NW., Washington, DC 20220;

(3) *Office of the Comptroller of the Currency:* Constitution Center, 407 Seventh St. SW., Washington, DC 20024;

(4) *Financial Management Service:* 401 14th St. SW., Washington, DC 20227;

(5) *Internal Revenue Service:* 1111 Constitution Ave. NW., Washington, DC 20224;

(6) *United States Mint:* 801 Ninth St. NW., Washington, DC 20220;

(7) *Bureau of Engraving and Printing:* Eastern Currency Facility, 14th and C Streets SW., Washington, DC 20228 and Western Currency Facility, 9000 Blue Mound Rd., Fort Worth, TX 76131;

(8) *Financial Crimes Enforcement Network:* P.O. Box 39, Vienna, VA 22183–0039;

(9) *Special Inspector General for the Troubled Asset Relief Program (SIGTARP):* 1801 L St. NW., Washington DC 20220;

(10) *The Office of Inspector General:* 740 15th St. NW., Washington, DC 20220; and

(11) *Treasury Inspector General for Tax Administration:* 1125 15th St. NW., Suite 700A, Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing in accordance with Treasury's Privacy Act regulations (located at 31 CFR 1.26) to the Freedom of Information Act (FOIA) and Transparency Liaison, whose contact information can be found at *http://www.treasury.gov/FOIA/Pages/index.aspx* under ''FOIA Requester Service Centers and FOIA Liaison.'' If an individual believes more than one bureau maintains Privacy Act records concerning him or her, the individual may submit the request to the Office of Privacy, Transparency, and Records, FOIA and Transparency, Department of the Treasury, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

The request must be signed, and must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may submit your request online at *https://rdgw.treasury.gov/foia/pages/gofoia.aspx* or call for 1–202–622–0930 for questions. The requester must submit a written and signed request that:

- States that the request is made pursuant to the FOIA and/or Privacy Act disclosure regulations;
- Includes information that will enable the processing office to determine the fee category of the user;
- Is addressed to the bureau that maintains the record (in order for a request to be properly received by the Department, the request must be received in the appropriate bureau's disclosure office);
- Reasonably describe the records;
- Gives the address where the determination letter is to be sent;
- States whether or not the requester wishes to inspect the records or have a copy made without first inspecting them; and
- Include a firm agreement from the requester to pay fees for search, duplication or review, as appropriate. In the absence of a firm agreement to pay, the requester may submit a request for a waiver or reduction of fees, along with justification of how such a waiver request meets the criteria for a waiver or reduction of fees found in the FOIA statute at 5 U.S.C. 552(a)(4)(A)(iii).

This bulleted information will assist the FOIA and Transparency staff in conducting an effective search for your records.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Information is obtained from applicants for employment with disabilities as well as employees with disabilities who requested or received reasonable accommodations from the Treasury or a bureau as required by the Rehabilitation Act of 1973 and the ADAAA.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY .017

SYSTEM NAME:

Correspondence and Contact Information—Treasury

SYSTEM LOCATION:

The records are located in Treasury bureaus and offices, both in Washington, DC and at field locations as follows:

(1) *Departmental Offices:* 1500 Pennsylvania Ave. NW., Washington, DC 20220;

(2) *Alcohol and Tobacco Tax and Trade Bureau:* 1310 G St. NW., Washington, DC 20220.

(3) *Office of the Comptroller of the Currency:* Constitution Center, 400 Seventh St. SW., Washington, DC 20024;

(4) *Fiscal Service:* Liberty Center Building, 401 14th St. SW., Washington, DC 20227;

(5) *Internal Revenue Service:* 1111 Constitution Ave. NW., Washington, DC 20224;

(6) *United States Mint:* 801 Ninth St. NW., Washington, DC 20220;

(7) *Bureau of Engraving and Printing:* Eastern Currency Facility, 14th and C Streets SW., Washington, DC 20228 and Western Currency Facility, 9000 Blue Mound Rd., Fort Worth, TX 76131;

(8) *Financial Crimes Enforcement Network:* Vienna, VA 22183;

(9) *Special Inspector General for the Troubled Asset Relief Program (SIGTARP):* 1801 L St. NW., Washington, DC 20220;

(10) *Office of Inspector General:* 740 15th St. NW., Washington, DC 20220;

(11) *Office of the Treasury Inspector General for Tax Administration:* 1125 15th St. NW., Suite 700A, Washington, DC 20005; and

(12) *Financial Stability Oversight Council (FSOC):* 1500 Pennsylvania Ave. NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEMS:

- Individuals who serve on Treasury boards and committees;
- Third parties who identify potential contacts or who provide information Treasury uses to determine an individual's inclusion on a mailing or contact list;
- Individuals who provide contact information, or otherwise consent to having their contact information used, for facilitating communication with Treasury, including but not limited to, members of the public, government officials, representatives of industry, media, non-profits, academia, and others who express an interest in Treasury-related programs and activities;
- Individuals who request information or inclusion on mailing lists for information or updates from Treasury or one of its bureaus or offices, concerning specific issues or topics;
- Treasury employees, contractors, grantees, fiscal agents, financial agents, interns, and detailees, members of the public, government officials, and representatives of industry, media, non-

profits, academia, and others, paid or non-paid, attending a Treasury sponsored event, work activity, or an event in which Treasury participated, including meetings, events, or conferences;

- Emergency contact information for the individual point-of-contact for organizations in the event that individual suffers an injury on Treasury premises;
- Alternative points-of-contact contact information provided by individuals or organizations included in a mailing or contact list; and
- Individuals who voluntarily join a Treasury-owned and operated web portal for collaboration purposes.

CATEGORIES OF RECORDS IN THE SYSTEMS:

- Name
- Preferred name
- Business contact information including, but not limited to:
  - Business or organization name;
  - Business or organization type;
  - Business mailing address;
  - Job or functional title or business affiliation;
  - Phone number(s);
  - Mobile phone number; fax number;
  - Pager number;
  - Electronic mail (Email) addresses;
- Personal contact information, including, but not limited to:
  - Mailing address;
  - Phone number(s);
  - Mobile phone number; fax number;
  - Pager number;
  - Electronic mail (Email) addresses;
- Other contact information provided by individuals while on travel or otherwise away from the office or home, including:
  - Assistant or other similar point of contact's name, title, or contact information;
- Preferred contact method(s) and contact rules (any specific rules to be followed when considering contacting an individual);
- Communications between Treasury employees and members of the public, federal, state and local government officials, and representatives of industry, media, non-profits, and academia;
- General descriptions of particular topics or subjects of interest as related to individuals or organizations who communicate with Treasury;
- Information regarding curricula vitae, including memberships in professional societies, affiliation with standards bodies, any teaching positions held, or any publications associated with the individual;
- Travel preferences (individuals who serve on Treasury boards and committees only);
- Identification number assigned by computer in cases where created in order to retrieve information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEMS:

5 U.S.C. 301.

PURPOSES:

The systems are maintained to mail informational literature or responses to those who request it; maintain lists of individuals who attend Treasury sponsored events, conferences, work meetings and other activities, or events in which Treasury participates; maintain lists and credentials of individuals who Treasury may consult professionally in furtherance of its mission; and for other purposes for which mailing or contact lists may be created.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEMS, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a (b) of the Privacy Act, all or a portion of the records or information contained in these systems may be disclosed outside Treasury as a routine use pursuant to 5 U.S.C. 552a (b) (3), as follows:

A. To the Department of Justice (including United States Attorneys' Offices) or other federal agencies conducting litigation or in proceedings before any court or adjudicative or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. Treasury or any component thereof;
2. Any employee of Treasury in his/her official capacity;
3. Any employee of Treasury in his/her individual capacity where the Department of Justice or Treasury has agreed to represent the employee; or
4. The United States or any agency thereof.

B. To a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. Treasury suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;
2. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with Treasury's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, fiscal agents, financial agents, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for Treasury, when necessary to accomplish an agency function related to the system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to Treasury officers and employees.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person authorizing the disclosure.

H. To sponsors, employers, contractors, facility operators, grantees, experts, fiscal agents, financial agents, and consultants, paid or non-paid, in connection with establishing an access account for an individual or maintaining appropriate points of contact and when necessary to accomplish a Treasury mission function or objective related to the system of records.

I. To other individuals in the same operational program supported by an information technology resource, where appropriate notice to the individual has been made that his or her contact information will be shared with other members of the same operational program in order to facilitate collaboration.

J. To federal agencies, councils and offices, such as the Office of Personnel Management, the Merit Systems Protection Board, the Office of Management and Budget, the Federal Labor Relations Authority, the Government Accountability Office, the Financial Stability Oversight Council, and the Equal Employment Opportunity

Commission in the fulfillment of these agencies' official duties.

K. To international, federal, state, local, tribal, or private entities for the purpose of the regular exchange of business contact information in order to facilitate collaboration for official business.

L. To the news media and the public, with the approval of the Senior Agency Official for Privacy, or her designee, in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of Treasury or is necessary to demonstrate the accountability of Treasury's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in these systems are on paper and/or in digital or other electronic form. Digital and other electronic images are stored on a storage area network in a secured environment. Records, whether paper or electronic, may be stored in Departmental Offices or at the bureau or office level.

RETRIEVABILITY:

Information may be retrieved, sorted, and/or searched by an identification number assigned by computer, facility, business affiliation, email address, name of the individual, or other data fields previously identified in this System of Records Notice.

SAFEGUARDS:

Information in these systems is safeguarded in accordance with applicable laws, rules, and policies, including Treasury Directive 85–01, Department of the Treasury Information Technology (IT) Security Program. Further, security protocols for these systems of records will meet multiple National Institute of Standards and Technology security standards from authentication to certification and authorization. Records in these systems of records will be maintained in a secure, password protected electronic system that will use security hardware and software to include: multiple firewalls, active intruder detection, and role-based access controls. Additional safeguards will vary by component and program. All records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include restricting access to authorized personnel who have a ''need to know,'' using locks, and password protection identification features. Treasury file areas are locked after normal duty hours and the facilities are protected by security personnel who monitor access to and egress from Treasury facilities.

RETENTION AND DISPOSAL:

Records are securely retained and disposed of in accordance with the National Archives and Records Administration's General Records Schedule 12, item 2a. Files may be retained for up to three years depending on the record. For records that may be used in litigation, the files related to that litigation will be retained for three years after final court adjudication.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Freedom of Information Act and Transparency, Office of Privacy, Transparency, and Records, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any record contained in these systems of records, or seeking to contest its content, may submit a request in writing, in accordance with Treasury's Privacy Act regulations (located at 31 CFR 1.26), to the Freedom of Information Act (FOIA) and Transparency Liaison, whose contact information can be found at *http://www.treasury.gov/FOIA/Pages/index.aspx* under ''FOIA Requester Service Centers and FOIA Liaison.'' If an individual believes more than one bureau maintains Privacy Act records concerning him or her, the individual may submit the request to the Office of Privacy, Transparency, and Records, FOIA and Transparency, Department of the Treasury, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

No specific form is required, but a request must be written and:

- Be signed and either notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization;
- State that the request is made pursuant to the FOIA and/or Privacy Act disclosure regulations;
- Include information that will enable the processing office to determine the fee category of the user;
- Be addressed to the bureau that maintains the record (in order for a request to be properly received by the Department, the request must be received in the appropriate bureau's disclosure office);
- Reasonably describe the records;
- Give the address where the determination letter is to be sent;
- State whether or not the requester wishes to inspect the records or have a copy made without first inspecting them; and
- Include a firm agreement from the requester to pay fees for search, duplication, or review, as appropriate. In the absence of a firm agreement to pay, the requester may submit a request for a waiver or reduction of fees, along with justification of how such a waiver request meets the criteria for a waiver or reduction of fees found in the FOIA statute at 5 U.S.C. 552(a)(4)(A)(iii).

You may also submit your request online at *https://rdgw.treasury.gov/foia/pages/gofoia.aspx* and call 1–202–622–0930 with questions.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Information contained in these systems is obtained from affected individuals, organizations, and facilities; public source data; other government agencies; and information already in other Treasury records systems.

EXEMPTIONS CLAIMED FOR THESE SYSTEMS:

None.

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Part III

Department of the Treasury

Departmental Offices; Privacy Act of 1974; Systems of Records; Notice

DEPARTMENT OF THE TREASURY

Departmental Offices; Privacy Act of 1974; Systems of Records

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of systems of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Departmental Offices (DO) is publishing its Privacy Act systems of records.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974, 5 U.S.C. 552a and the Office of Management and Budget (OMB) Circular No. A–130, the Department completed a review of its Privacy Act systems of records notices to identify and implement minor changes that more accurately describe these records. Such changes throughout the document are editorial and consist principally of changes to system locations and system manager addresses, and revisions to organizational titles. The notices were last published in their entirety on January 2, 2014, beginning at 79 FR 209.

Two systems of record have been amended, altered, or added to the Department's inventory of Privacy Act notices since January 2, 2014, as follows:

DO .016—Multiemployer Pension Reform Act of 2014 (MPRA)'' (March 16, 2016 at 81 FR 14223) Treasury uses the system to account for all individuals eligible to vote in elections with respect to benefit suspensions under MPRA whose information is furnished by the plan sponsors proposing the benefit suspensions and DO .411 Intelligence Enterprise Files (September 26, 2014 at 79 FR 58042) The records are used to fulfill OIA's statutory and Executive Order mandates to collect (overtly or through publicly-available sources), receive, analyze, collate, produce, and disseminate information, intelligence, and counterintelligence related to the operations and responsibilities of the entire Department, including all components and bureaus.

In addition, as a part of this Biennial review, the Department is updating and reissuing two systems of records, including: DO .144—General Counsel Litigation Referral and Reporting System and DO .214—DC Pensions Retirement Records. These updates are discussed below:

(1) DO .144—General Counsel Litigation Referral and Reporting System, which now includes an expanded purpose, to ''keep track of component assigned to handle a particular litigation action.'' DO.144 also includes an update to routine use (1) to ''Disclose information to the Department of Justice (DOJ) (including United States Attorneys' Offices) or other federal agencies conducting litigation or in proceedings before any court or adjudicative or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation: a. Treasury or any component thereof; b. Any employee of Treasury in his/her official capacity; c. Any employee of Treasury in his/her individual capacity where the Department of Justice or Treasury has agreed to represent the employee; or, The United States or any agency thereof.''

This routine use seeks to specify that the Department routinely discloses litigation information to DOJ under the above limited circumstances. The Department previously relied on more general routine use language to discuss disclosure to other federal agencies. However, this change more accurately discusses the routine disclosure to DOJ. The Department has reviewed this routine use and determined that it is compatible with the purpose of collecting the records. The system collects information for the purpose of responding to inquiries from the DOJ and other agencies, therefore the routine disclosure to DOJ is in accordance with the purpose of collection.

(2) DO .214—DC Pensions Retirement Records, now includes changes to three routine uses discussed below: Routine use (4) now states ''To disclose information to another federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a federal agency, when the federal government is a party to the judicial or administrative proceeding. In those cases where the federal government is not a party to the proceeding, records may not be disclosed unless the party complies with the requirements of 31 CFR 1.11.'' This routine use has been slightly altered to include the exceptions to non-disclosure when the government is not a party to a proceeding, cited in 31 CFR 1.11. The routine use refers to 31 CFR 1.11, which sets forth the policies and procedures of the Department regarding the production or disclosure of information contained in Department documents for use in legal proceedings pursuant to a request, order, or subpoena (collectively referred to in this subpart as a demand).

Routine use (6) has been altered to include clarifying language and now includes the following language: ''To disclose information to the Department of Justice when seeking legal advice, or for use in any proceeding, or to prepare for a proceeding, when any of the following is a party to, has an interest in, or is likely to be affected by the proceeding: (A) The Department or any component thereof; (B) Any employee of the Department in his or her official capacity; (C) Any employee of the Department in his or her individual capacity where the Department of Justice or the Department has agreed to represent the employee; or (D) The federal funds established by the Act to pay benefit payments. This routine use more specifically discusses the circumstances under which the Department will disclose DC Pension information to the DOJ.

DO.214 also includes a new routine use (11) which includes the following language, ''To disclose health insurance enrollment information to OPM. OPM provides this enrollment information to their health care carriers who provide a health benefits plan under the Federal Employees Health Benefits Program, or health insurance carriers contracting with the District to provide a health benefits plan under the health benefits program for District employees, Social Security numbers and other information necessary to identify enrollment in a plan, to verify eligibility for payment of a claim for health benefits, or to carry out the coordination for benefits provisions of such contracts.''

The Department has reviewed these routine uses and determined that they are compatible with the purpose of collecting the records. Each routine use listed above is compatible with the original purpose of collection, specifically, to provide information on which to base determinations of (1) eligibility for, and computation of, benefit payments and refund of contribution payments; (2) direct deposit elections into a financial institution; (3) eligibility and premiums for health insurance and group life insurance; (4) withholding of income taxes; (5) under- or over-payments to recipients of a benefit payment, and for overpayments, the recipient's ability to repay the overpayment; (6) Federal payment made from the General Fund to the District of Columbia Pension Fund and the District of Columbia Judicial Retirement and Survivors Annuity Fund; (7) impact to the Funds due to proposed Federal and/or District legislative changes; and (8) District or Federal liability for benefit payments to former District police officers, firefighters, and teachers, including survivors, dependents, and beneficiaries who are receiving a Federal and/or District benefit.

Systems Covered by This Notice

This notice covers all systems of records maintained by the Departmental Offices as of [enter date of FR publication]. The system notices are reprinted in their entirety following the Table of Contents.

Ryan Law,

Acting Deputy Assistant Secretary for Privacy, Transparency, and Records.

Departmental Offices (DO)

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TREASURY/DO .003

SYSTEM NAME:

Law Enforcement Retirement Claims Records—Treasury/DO.

SYSTEM LOCATION:

These records are located in the Office of Human Capital Strategic Management, Suite 1200, 1750 Pennsylvania Avenue NW., Department of the Treasury, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former Federal employees who have submitted claims for law enforcement retirement coverage (claims) with their bureaus in accordance with 5 U.S.C. 8336(c)(1) and 5 U.S.C. 8412(d).

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records relating to claims filed by current and former Treasury employees under 5 U.S.C. 8336(c)(1) and 5 U.S.C. 8412(d). These case files contain all documents related to the claim 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.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 8336(c)(1), 8412(d), 1302, 3301, and 3302; E.O. 10577; 3 CFR 1954–1958 Comp., p. 218 and 1959–1963 Comp., p. 519; and E.O. 10987.

PURPOSE(S):

The purpose of the system is to make determinations concerning requests by Treasury employees that the position he or she holds qualifies as a law enforcement position for the purpose of administering employment and retirement benefits.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used:

(1) To disclose pertinent information to the appropriate federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) To disclose information to any source from which additional information is requested in the course of processing a claim, to the extent necessary to identify the individual whose claim is being adjudicated, inform the source of the purpose(s) of the request, and identify the type of information requested;

(3) To disclose information to a federal agency, in response to its request, in connection with the hiring or retention of an individual, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, 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 requesting the agency's decision on the matter;

(4) To provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(5) To disclose information which is relevant and necessary to the Department of Justice or to a court when the Government is party to a judicial proceeding before the court;

(6) To provide information to the National Archives and Records Administration for use in records management inspections conducted under authority of 44 U.S.C. 2904 and 2908;

(7) To disclose information to officials of the Merit Systems Protection Board, the Office of the Special Counsel, the Federal Labor Relations Authority, the Equal Employment Opportunity Commission, or the Office of Personnel Management when requested in performance of their authorized duties;

(8) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing Counsel or witnesses in the course of civil discovery, litigation or settlement negotiations in response to a court order where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings; and

(9) To provide information to officials of labor organizations recognized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

(10) To appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the

security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department 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 the Department'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 stored electronically or on paper in secure facilities in a locked drawer behind a locked door. Electronic records are stored on magnetic disc, tape, digital media, and CD-ROM.

RETRIEVABILITY:

Records may be retrieved by names of the individuals on whom they are maintained.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable Treasury automated systems security and access policies. Strict controls are imposed to minimize the risk of compromising the information that is stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

In accordance with General Records Schedule 1, Civilian Personnel Records, Category 7d are disposed of after closing of the case.

SYSTEM MANAGER(S) AND ADDRESSES:

Director, Office of Human Capital Strategic Management, Suite 1200, 1750 Pennsylvania Avenue NW., Department of the Treasury, Washington, DC 20220.

NOTIFICATION PROCEDURE:

It is required that individuals submitting claims be provided a copy of the record under the claims process. They may, however, contact the agency personnel or designated office where the action was processed, regarding the existence of such records on them. They must furnish the following information for their records to be located and identified: (1) Name, (2) date of birth, (3) approximate date of closing of the case and kind of action taken, (4) organizational component involved.

RECORD ACCESS PROCEDURES:

It is required that individuals submitting claims be provided a copy of the record under the claims process. However, after the action has been closed, an individual may request access to the official copy of the claim file by contacting the system manager. Individuals must provide the following information for their records to be located and identified: (1) Name, (2) date of birth, (3) approximate date of closing of the case and kind of action taken, (4) organizational component involved.

CONTESTING RECORD PROCEDURES:

Review of requests from individuals seeking amendment of their records which have been the subject of a judicial or quasi-judicial action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the action of the agency ruling on the case, and will not include a review of the merits of the action, determination, or finding. Individuals wishing to request amendment to their records to correct factual errors should contact the system manager. Individuals must furnish the following information for their records to be located and identified: (1) Name, (2) date of birth, (3) approximate date of closing of the case and kind of action taken, (4) organizational component involved.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided: (1) By the individual on whom the record is maintained, (2) by testimony of witnesses, (3) by agency officials, (4) from related correspondence from organizations or persons.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO.007

SYSTEM NAME:

General Correspondence Files—Treasury/DO.

SYSTEM LOCATION:

Departmental Offices, Department of the Treasury, 1500 Pennsylvania Ave. NW., Washington, DC 20220. Components of this record system are in the following offices within the Departmental Offices:

1. Office of Foreign Assets Control.
2. Office of Tax Policy.
3. Office of International Affairs.
4. Office of the Executive Secretariat.
5. Office of Legislative Affairs.
6. Office of Terrorism and Financial Intelligence.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of Congress, U.S. Foreign Service officials, officials and employees of the Treasury Department, officials of municipalities and State governments, and the general public, foreign nationals, members of the news media, businesses, officials and employees of other Federal Departments and agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Incoming correspondence and replies pertaining to the mission, function, and operation of the Department, tasking sheets, and internal Treasury memorandum. Authority for maintenance of the system:

5 U.S.C. 301.

PURPOSE(S):

The manual systems and/or electronic databases (*e.g.*, Treasury Automated Document System (TADS)) used by the system managers are used to manage the high volume of correspondence received by the Departmental Offices and to accurately respond to inquiries, suggestions, views and concerns expressed by the writers of the correspondence. It also provides the Secretary of the Treasury with sentiments and statistics on various topics and issues of interest to the Department.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(2) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings;

(3) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114;

(4) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(5) Provide information to appropriate federal, state, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license;

(6) Provide information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings, and

(7) To appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department 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 the Department'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 stored electronically or on paper in secure facilities in a locked drawer behind a locked door. Electronic records are stored on magnetic disc, tape, digital media, and CD-ROM.

RETRIEVABILITY:

Records may be retrieved by name of individual or letter number, address, assignment control number, or organizational relationship.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable Treasury automated systems security and access policies. Strict controls are imposed to minimize the risk of compromising the information that is stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

Some records are maintained for three years, then destroyed by burning. Other records are updated periodically and maintained as long as needed. Some electronic records are periodically updated and maintained for two years after date of response; hard copies of those records are disposed of after three months in accordance with the NARA schedule. Paper records of the Office of the Executive Secretary are stored indefinitely at the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESSES:

1. Director, Office of Foreign Assets Control, U.S. Treasury Department, Room 2233, Treasury Annex, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

2. Freedom of Information Act Officer, Office of Tax Policy, U.S. Treasury Department, Room 5037G–MT, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

3. Senior Director, International Affairs Business Office, U.S. Treasury Department, Room 4456–MT, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

4. Director, VIP Correspondence, Office of the Executive Secretariat, U.S. Treasury Department, Room 3419–MT, Washington, DC 20220.

5. Deputy to the Assistant Secretary, Office of Legislative Affairs, U.S. Treasury Department, Room 3464–MT, Washington, DC 20220.

6. Senior Resource Manager, Office of Terrorism and Financial Intelligence, U.S. Department of the Treasury, Room 4006, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or to gain access to records maintained in this system may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Individuals must submit a written request containing the following elements: (1) Identify the record system; (2) identify the category and type of records sought; and (3) provide at least two items of secondary identification (date of birth, employee identification number, dates of employment, or similar information). Address inquiries to Director, Disclosure Services (see ''Record access procedures'' below).

RECORD ACCESS PROCEDURES:

Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See ''Record access procedures'' above.

RECORD SOURCE CATEGORIES:

Members of Congress or other individuals who have corresponded with the Departmental Offices, other governmental agencies (federal, state, and local), foreign individuals and official sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO.010

SYSTEM NAME:

Office of Domestic Finance, Actuarial Valuation System—Treasury/DO.

SYSTEM LOCATION:

Departmental Offices, Office of Government Financing, Office of Policy and Legislative Review, 1120 Vermont Avenue NW., Washington, DC 20005.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Participants and beneficiaries of the Foreign Service Retirement and Disability System and the Foreign Service Pension System. Covered employees are located in the following agencies: Department of State, Department of Agriculture, Agency for International Development, Peace Corps, and the Department of Commerce.

CATEGORIES OF RECORDS IN THE SYSTEM:

Active Records: Name; social security number; salary; category-grade; pay-plan; department-class; year of entry into system; service computation date; year of birth; year of resignation or year of death, and refund if any.

Retired Records: Same as active records; annuity; year of separation; cause of separation (optional, disability, deferred, etc.); years and months of service by type of service; marital status; spouse's year of birth; annuitant type; principal's year of death; number of children on annuity roll; children's years of birth and annuities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 4058 and 22 U.S.C. 4071h.

PURPOSE(S):

22 U.S.C. 4058 and 22 U.S.C. 4071h require that the Secretary of the Treasury prepare estimates of the annual appropriations required to be made to the Foreign Service Retirement and Disability Fund. The Secretary of the Treasury is also required, at least every five years, to prepare valuations of the Foreign Pension System and the Foreign Service Retirement and

Disability System. In order to satisfy this requirement, participant data must be collected so that liabilities for the Foreign Service Retirement and Disability System and the Foreign Service Pension System can be actuarially determined.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Data regarding specific individuals is released only to the contributing agency for purposes of verification, and

(2) Other information may be disclosed to appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department 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 the Department'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 stored electronically or on paper in secure facilities in a locked drawer behind a locked door. Electronic records are stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

Records may be retrieved alphabetically.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable Treasury automated systems security and access policies. Strict controls are imposed to minimize the risk of compromising the information that is stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions. Access is restricted to select employees of the Office of Government Financial Policy. Passwords are required to access the data.

RETENTION AND DISPOSAL:

Records are retained on a multiple year basis in order to perform actuarial experience studies.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Policy and Legislative Review, Departmental Offices, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to records maintained in this system, or seek to contest its content must submit a written request containing the following elements: (1) Identify the record system; (2) identify the category and type of records sought; and (3) provide at least two items of secondary identification (date of birth, employee identification number, dates of employment, or similar information). Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

RECORD ACCESS PROCEDURES:

See ''notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''notification procedure'' above.

RECORD SOURCE CATEGORIES:

Data for actuarial valuation are provided by organizations responsible for pension funds and pay records, namely the Department of State and the National Finance Center.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .015

SYSTEM NAME:

Political Appointee Files—Treasury/DO.

SYSTEM LOCATION:

Department of the Treasury, Departmental Offices, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who may possibly be appointed to political positions in the Department of the Treasury, consisting of Presidential appointees requiring Senate confirmation; non-career Senior Executive Service appointees; and Schedule C appointees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files may consist of the following: Referral letters; White House clearance letters; information about an individual's professional licenses (if applicable); IRS results of inquiries; notation of National Agency Check (NAC) results (favorable or otherwise); internal memoranda concerning an individual; Financial Disclosure Statements (Standard Form 278); results of inquiries about the individual; Questionnaire for National Security Positions Standard Form 86; Personal Data Statement and General Counsel Interview sheets; published works including books, newspaper and magazine articles, and treatises by the individual; newspaper and magazine articles written about or referring to the individual; and or articles containing quotes by the individual, and other correspondence relating to the selection and appointment of political appointees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3301, 3302 and E.O. 10577.

PURPOSE(S):

These records are used by authorized personnel within the Department to determine a potential candidate's suitability for appointment to non-career positions within the Department of the Treasury.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed to:

(1) The Office of Personnel Management, Merit Systems Protection Board, Equal Employment Opportunity Commission, and General Accounting Office for the purpose of properly administering Federal personnel systems or other agencies' systems in accordance with applicable laws, Executive Orders, and regulations;

(2) A federal, state, local, or foreign agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information that has requested information relevant to or necessary to the requesting agency's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) A court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation or settlement negotiations in response to a court order where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(4) A congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(5) Third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(6) Appropriate federal, state, local, or foreign agencies responsible for investigating or prosecuting the violation of, or for implementing a statute, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation, and

(7) To appropriate agencies, entities, and persons when: (a) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department 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 the Department'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 stored electronically or on paper in secure facilities in a locked drawer behind a locked door. Electronic records are stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

Records may be retrieved by last name of individual and Social Security Number.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable Treasury automated systems security and access policies. Strict controls are imposed to minimize the risk of compromising the information that is stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearance or permissions. Building employs security guards.

RETENTION AND DISPOSAL:

Records are destroyed at the end of the Presidential administration during which the individual is hired. For non-selectees, records of individuals who are not hired are destroyed one year after the file is closed, but not later than the end of the Presidential administration during which the individual is considered.

SYSTEM MANAGER(S) AND ADDRESS:

White House Liaison, Department of the Treasury, Room 3418, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be informed if they are named in this system or gain access to records maintained in the system must submit a written, signed request containing the following elements: (1) Identify the record system; (2) identify the category and type of records sought; and (3) provide at least two items of secondary identification (date of birth, employee identification number, dates of employment, or similar information). Address inquiries to: Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

RECORD ACCESS PROCEDURES:

See ''Record Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Record Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Records are submitted by the individuals and compiled from interviews with those individuals seeking non-career positions. Additional sources may include the White House, Office of Personnel Management, Internal Revenue Service, Department of Justice and international, state, and local jurisdiction law enforcement components for clearance documents, and other correspondence and public record sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .016

SYSTEM NAME:

Multiemployer Pension Reform Act of 2014.

SYSTEM LOCATION:

System records are located at one or more service providers under contract with the Department of the Treasury, Departmental Offices, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEMS:

Individuals identified as participants or beneficiaries of deceased participants by plan sponsors that have submitted an application for suspension of benefits under the Multiemployer Pension Reform Act of 2014.

CATEGORIES OF RECORDS IN THE SYSTEMS:

Personal contact information, including, but not limited to:

- Mailing addresses;
- Phone numbers;
- Electronic mail (Email) addresses; and
- Information sufficient to tabulate electronic votes and check the integrity of voting systems.

AUTHORITY FOR MAINTENANCE OF THE SYSTEMS:

Multiemployer Pension Reform Act of 2014, Division O of the Consolidated and Further Continuing Appropriations Act 2015, Pub. L. 113–235.

PURPOSES:

The system is maintained to support the provision of ballot packages to individuals identified as participants or beneficiaries of deceased participants by plan sponsors that have submitted an application for suspension of benefits under the Multiemployer Pension Reform Act of 2014, and may be used to provide technical support to voters in connection with the ballots and to check the integrity of the election.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEMS, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in these systems may be disclosed outside Treasury as a routine use pursuant to 5 U.S.C. 552a(b)(3), as follows:

A. To the Department of Justice (including United States Attorneys' Offices) or other federal agencies conducting litigation or in proceedings before any court or adjudicative or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. Treasury or any component thereof;

2. Any employee of Treasury in his/her official capacity;

3. Any employee of Treasury in his/her individual capacity where the Department of Justice or Treasury has agreed to represent the employee; or

4. The United States or any agency thereof.

B. To a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. Treasury suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with Treasury's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, fiscal agents, financial agents, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for Treasury, when necessary to accomplish an agency function related to the system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to Treasury officers and employees.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person authorizing the disclosure.

H. To federal agencies, councils, and offices, such as the Office of Personnel Management, the Merit Systems Protection Board, the Office of Management and Budget, the Federal Labor Relations Authority, the Government Accountability Office, the Financial Stability Oversight Council, and the Equal Employment Opportunity Commission in the fulfillment of these agencies' official duties.

I. To the news media and the public, with the approval of the Senior Agency Official for Privacy, or her designee, in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of Treasury or is necessary to demonstrate the accountability of Treasury's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

K. To international, federal, state, local, tribal, or private entities for the purpose of the regular exchange of business contact information in order to facilitate collaboration for official business.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in these systems are on paper and/or in digital or other electronic form. Digital and other electronic images are stored on a storage area network in a secured environment. Records, whether paper or electronic, may be stored in Departmental Offices or with one or more contracted service providers.

RETRIEVABILITY:

Electronic information may be retrieved, sorted, and/or searched by email address, name of the individual, or other data fields previously identified in this notice.

SAFEGUARDS:

Information in these systems is safeguarded in accordance with applicable laws, rules, and policies, including Treasury Directive 85–01, Department of the Treasury Information Technology (IT) Security Program. Further, security protocols for these systems of records will meet multiple National Institute of Standards and Technology security standards from authentication to certification and authorization. Records in these systems of records will be maintained in a secure, password protected electronic system that will use security hardware and software to include multiple firewalls, active intruder detection, and role-based access controls. Additional safeguards will vary by component and program. All records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include restricting access to authorized personnel who have a ''need to know,'' using locks, and password protection identification features. Treasury file areas are locked after normal duty hours and the facilities are protected by security personnel who monitor access to and egress from Treasury facilities.

RETENTION AND DISPOSAL:

Records are securely retained and disposed in accordance with Records Control Schedule N1–056–03–010, Item 1b2. Files will be retained for ten years. For records that become relevant to litigation, the files related to that litigation will be retained for the longer of ten years or three years after final court adjudication.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Assistant Secretary, Office of Tax Policy, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any record contained in these systems of records, or seeking to contest its content, may submit a request in writing, in accordance with Treasury's Privacy Act regulations (located at *31 CFR 1.26*), to the Freedom of Information Act (FOIA) and Transparency Liaison, whose contact information can be found at *http://www.treasury.gov/FOIA/Pages/index.aspx* under ''FOIA Requester Service Centers and FOIA Liaison.'' If an individual believes more than one bureau maintains Privacy Act records concerning him or her, the individual may submit the request to the Office of Privacy, Transparency, and Records, FOIA and Transparency, Department of the Treasury, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

No specific form is required, but a request must be written and:

- Be signed and either notarized or submitted under *28 U.S.C. 1746,* a law that permits statements to be made under penalty of perjury as a substitute for notarization
- State that the request is made pursuant to the FOIA and/or Privacy Act disclosure regulations;
- Include information that will enable the processing office to determine the fee category of the user;
- Be addressed to the bureau that maintains the record (in order for a request to be properly received by the Department, the request must be received in the appropriate bureau's disclosure office);

• Reasonably describe the records;

• Give the address where the determination letter is to be sent;

• State whether or not the requester wishes to inspect the records or have a copy made without first inspecting them; and

• Include a firm agreement from the requester to pay fees for search, duplication, or review, as appropriate. In the absence of a firm agreement to pay, the requester may submit a request for a waiver or reduction of fees, along with justification of how such a waiver request meets the criteria for a waiver or reduction of fees found in the FOIA statute at *5 U.S.C. 552*(a)(4)(A)(iii).

You may also submit your request online at *https://rdgw.treasury.gov/foia/pages/gofoia.aspx* and call 1–202–622–0930 with questions.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Information contained in these systems is obtained from affected individuals and organizations.

EXEMPTIONS CLAIMED FOR THESE SYSTEMS:

None.

TREASURY/DO .060

SYSTEM NAME:

Correspondence Files and Records on Dissatisfaction—Treasury/DO.

SYSTEM LOCATION:

Office of Human Capital Strategic Management, Suite 1200, 1750 Pennsylvania Avenue NW., Department of the Treasury, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Former and current Department employees who have submitted complaints to the Office of Human Resources Strategy and Solutions (HRSS) or whose correspondence concerning a matter of dissatisfaction has been referred to HRSS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence dealing with former and current employee complaints.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

To maintain a record of correspondence related to inquiries filed with the Departmental Office of Human Resources Strategy and Solutions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose pertinent information to appropriate federal, state, and local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential civil or criminal law or regulation;

(2) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(3) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114;

(4) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation, and

(5) To appropriate agencies, entities, and persons when: (a) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department 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 the Department'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 stored electronically or on paper in secure facilities in a locked drawer behind a locked door. Electronic records are stored on magnetic disc, tape digital media, and CD–ROM.

RETRIEVABILITY:

Records may be retrieved by bureau and employee name.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable Treasury automated systems security and access policies. Strict controls are imposed to minimize the risk of compromising the information that is stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with Department of the Treasury Directive 25–02, ''Records Disposition Management Program,'' and the General Records Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Human Capital Strategic Management, Suite 1200, 1750 Pennsylvania Avenue NW., Department of the Treasury, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Persons inquiring as to the existence of a record on themselves may contact: Director, Human Capital Strategic Management, Suite 1200, 1750 Pennsylvania Avenue NW., Department of the Treasury, Washington, DC 20220. The inquiry must include the individual's name and employing bureau.

RECORD ACCESS PROCEDURES:

Persons seeking access to records concerning themselves may contact: Office of Human Resources Strategy and Solutions, Suite 1200, 1750 Pennsylvania Avenue NW., Department of the Treasury, Washington, DC 20220. The inquiry must include the individual's name and employing bureau.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment to their records to correct factual error should contact the Director, Office of Human Resources Strategy and Solutions at the address shown in Access, above. They must furnish the following information: (a) Name; (b) employing bureau; (c) the information being contested; (d) the reason why they believe information is untimely, inaccurate, incomplete, irrelevant, or unnecessary.

RECORD SOURCE CATEGORIES:

Current and former employees, and/or representatives, employees' relatives, general public, Congressmen, the White House, management officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO. 120

SYSTEM NAME:

Records Related to Office of Foreign Assets Control Economic Sanctions.

SYSTEM LOCATION:

Office of Foreign Assets Control (OFAC), Treasury Annex, 1500 Pennsylvania Ave. NW., Washington, DC 20220 or other U.S. Government facilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A system of records within Treasury's Departmental Offices exists to manage records related to the implementation, enforcement, and administration of U.S. economic sanctions. This includes records and information relating to individuals who:

(1) Are or have been subject to investigation to determine whether they meet the criteria for designation or blocking and/or are determined to be designated or blocked individuals or otherwise subject to sanctions under the sanctions programs administered by OFAC, or with respect to whom information has been obtained by OFAC in connection with such an investigation;

(2) Engaged in or are suspected of having engaged in transactions and activities prohibited by Treasury Department regulations found at 31 CFR part 1, subpart B, chapter V, relevant statutes, and related Executive orders or proclamations, or with respect to whom information has been obtained by OFAC in connection with an investigation of such transactions and activities;

(3) Are applicants for permissive and authorizing licenses or already hold valid licenses under Treasury Department regulations, relevant statutes, and related Executive orders or proclamations;

(4) Hold blocked assets. Although most persons (individuals and entities) reporting the holding of blocked assets or persons holding blocked assets are not individuals, such reports and censuses conducted by OFAC identify a small number of U.S. individuals as holders of assets subject to U.S. jurisdiction which are blocked under the various sets of Treasury Department regulations involved, relevant statutes, and related Executive orders or proclamations; or

(5) Submitted claims received, reviewed, and/or processed by OFAC for payment determination pursuant to Section 2002 of the Victims of Trafficking and Violence Protection Act of 2000 (Pub. L. 106–386, Section 2002).

CATEGORIES OF RECORDS IN THE SYSTEM:

Records related to the implementation, enforcement, and administration of U.S. sanctions programs, including records related to:

(1) Investigations to determine whether an individual meets the criteria for designation or blocking and/or is determined to be a designated or blocked individual or otherwise affected by one or more sanctions programs administered by OFAC. In the course of an investigation, personally identifiable information is collected. Once an individual is designated, OFAC provides personally identifiable information to the public so that it can recognize listed individuals and prevent them from accessing the U.S. financial system. The release of personally identifiable information pertaining to the designee is also important in helping to protect other individuals from being improperly identified as the sanctioned target. The personally identifiable information collected by OFAC may include, but is not limited to, names and aliases, dates of birth, citizenship information, addresses, identification numbers associated with government-issued documents, such as driver's license and passport numbers, and for U.S. individuals, Social Security numbers;

(2) Suspected or actual violations of regulations, relevant statutes, and related Executive orders or proclamations administered by OFAC;

(3) Applications for OFAC licenses—with attendant supporting documentary material and copies of licenses issued—related to engaging in activities with designated entities and individuals or other activities that otherwise would be prohibited by relevant statutes, regulations, and Executive orders or proclamations administered by OFAC, including reports by individuals and entities currently holding Treasury licenses concerning transactions which the license holder has conducted pursuant to the licenses;

(4) Reports and censuses of assets blocked or held by U.S. individuals and entities which have been blocked at any time since 1940 pursuant to Treasury Department regulations found at 31 CFR part 1, subpart B, chapter V, relevant statutes, and related Executive orders or proclamations; or

(5) Submitted claims received, reviewed, and/or processed by OFAC for payment determinations pursuant to Section 2002 of the Victims of Trafficking and Violence Protection Act of 2000 (Pub. L. 106–386).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

3 U.S.C. 301; 50 U.S.C. App. 1–44; 21 U.S.C. 1901–1908; 8 U.S.C. 1182; 18 U.S.C. 2339B; 22 U.S.C. 287c; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651; 50 U.S.C. 1701–1706; Pub. L. 110–286, 122 Stat. 2632; 22 U.S.C. 2370(a); Pub. L. 108–19, 117 Stat. 631; Pub. L. 106–386 § 2002; Pub. L. 108–175, 117 Stat. 2482; Pub. L. 109–344, 120 Stat. 1869; 31 CFR Chapter V.

PURPOSE(S):

This system of records exists within Treasury's Departmental Offices to manage records related to the implementation, enforcement, and administration of U.S. economic sanctions by OFAC. Included in this system of records are records:

(1) Relating to investigations into whether individuals and entities meet the criteria for economic sanctions under U.S. sanctions programs administered by OFAC. This portion of the system of records may be used during enforcement, designation, blocking, and other investigations, when applicable. These records are also used to produce the publicly issued List of Specially Designated Nationals and Blocked Persons (SDN List). The SDN List is used to publish information that will assist the public in identifying individuals and entities whose property and interests in property are blocked or otherwise affected by one or more sanctions programs administered by OFAC, as well as information identifying certain property of individuals and entities that are subject to OFAC economic sanctions programs, such as vessels.

(2) Relating to investigations of individuals and entities suspected of violating statutes, regulations, or Executive orders administered by OFAC. Possible violations may relate to financial, commercial, or other transactions with persons on whom sanctions have been imposed, including but not limited to foreign governments, blocked persons (entities and individuals), and specially designated nationals (entities and individuals). OFAC conducts civil investigations of possible violations. When it determines that a violation has occurred, OFAC issues a civil penalty or takes other administrative action, when appropriate. Criminal investigations of possible violations are conducted by relevant U.S. law enforcement agencies. OFAC refers criminal matters to those agencies and otherwise exchanges information with them to support the investigation and prosecution of possible violations. Records of enforcement investigations and

resulting administrative actions are also used to generate statistical information.

(3) Containing requests from U.S. and foreign individuals or entities for licenses to engage in commercial or humanitarian transactions, to unblock property and bank accounts, or to engage in other activities otherwise prohibited under economic sanctions administered by OFAC. This also includes information collected in the course of determining whether to issue a license and ensuring its proper use, as well as reports by individuals and entities currently holding Treasury licenses concerning transactions which the license holder conducted pursuant to the licenses. This portion of the system of records may be used during enforcement investigations, to ascertain whether there is compliance with the conditions of ongoing OFAC licenses, and to generate information used in reports on the number and types of licenses granted or denied under particular sanctions programs.

(4) Used to identify and administer assets of blocked foreign governments, groups, entities, or individuals. OFAC receives reports of asset blocking actions by U.S. entities and individuals when assets are blocked under the sanctions programs OFAC administers; when censuses are taken at various times for specific sanctions programs to identify the location, type, and value of property blocked under OFAC-administered programs; and when OFAC obtains information regarding blockable assets in the course of its investigations. Most blocked asset information is obtained by requiring reports from all U.S. holders of blocked property subject to OFAC reporting requirements. The reports normally contain information such as the name of the U.S. holder, the account party, the location of the property, and a description of the type and value of the asset. In some instances, adverse claims by U.S. entities and individuals against the blocked property are also reported. This portion of the system of records may be used during enforcement, designation, blocking, and other investigations as well as to produce reports and respond to requests for information.

(5) Used to support determinations made by OFAC pursuant to Section 2002 of Pub. L. 106–386, the Victims of Trafficking and Violence Protection Act of 2000, including the facilitating of payments provided for under the Act. OFAC has reported its determinations to other parts of Treasury to facilitate payment on claims.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose information to further the efforts of appropriate federal, state, local, or foreign agencies in investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, license, or agreement;

(2) Disclose information to a federal, state, local, or foreign agency, maintaining civil, criminal, or other relevant enforcement information or other pertinent information, which has requested information necessary or relevant to the requesting agency's official functions;

(3) Disclose information to the Departments of State, Justice, Homeland Security, Commerce, Defense, or Energy, or other federal agencies, in connection with Treasury licensing policy or other matters of mutual interest or concern;

(4) Provide information to appropriate national security and/or foreign-policy-making officials in the Executive branch to ensure that the management of OFAC's sanctions programs is consistent with U.S. foreign policy and national security goals;

(5) Disclose information relating to blocked property to appropriate state agencies for activities or efforts connected to abandoned property;

(6) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosure to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in response to a Court order, or in connection with criminal law proceedings, when such information is determined to be arguably relevant to the proceeding;

(7) Provide information to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(8) Disclose information to foreign governments and entities, and multilateral organizations—such as Interpol, the United Nations, and international financial institutions—consistent with law and in accordance with formal or informal international agreements, or for an enforcement, licensing, investigatory, or national security purpose;

(9) Provide information to third parties during the course of an investigation or an enforcement action to the extent necessary to obtain information pertinent to the investigation or to carry out an enforcement action;

(10) Provide access to information to any agency, entity, or individual for purposes of performing authorized security, audit, or oversight operations or meeting related reporting requirements;

(11) Disclose information to appropriate agencies, entities, and persons when: (a) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department 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 the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm; or

(12) Disclose information to the general public, in furtherance of OFAC's mission, regarding individuals and entities whose property and interests in property are blocked or otherwise affected by one or more OFAC economic sanctions programs, as well as information identifying certain property of individuals and entities subject to OFAC economic sanctions programs. This routine use includes disclosure of information to the general public in furtherance of OFAC's mission regarding individuals and entities that have been designated by OFAC. This routine use encompasses publishing this information in the **Federal Register**, in the Code of Federal Regulations, on OFAC's Web site, and by other means.

The information associated with individuals as published on OFAC's List of Specially Designated Nationals and Blocked Persons (the SDN List) generally relates to non-U.S. entities and individuals, and, therefore, the Privacy Act does not apply to most of the individuals included on the SDN List. However, a very small subset of the individuals on the SDN List consists of U.S. individuals. Individuals and entities on the SDN List are generally designated based on Executive orders and other authorities imposing sanctions with respect to terrorists, proliferators of weapons of mass destruction, sanctioned nations or regimes, narcotics traffickers, or other identified threats to the national security, foreign policy, and/or economy of the United States. Generally, the

personal identifier information provided on the SDN List may include, but is not limited to, names and aliases, addresses, dates of birth, citizenship information, and, at times, identification numbers associated with government-issued documents. It is necessary to provide this identifier information in a publicly available format so that listed individuals and entities can be identified and prevented from accessing the U.S. financial system. At the same time, the release of detailed identifier information of individuals whose property is blocked or who are otherwise affected by one or more OFAC economic sanctions programs is important in helping to protect other individuals from being improperly identified as the sanctioned target. Because the SDN List is posted on OFAC's public Web site and published in the **Federal Register** and in 31 CFR Appendix A, a designated individual's identifier information can be accessed by any individual or entity with access to the internet, the **Federal Register**, or 31 CFR Appendix A. Thus, the impact on the individual's privacy will be substantial, but this is necessary in order to make targeted economic sanctions effective. Designated individuals can file a ''de-listing petition'' to request their removal from the SDN List. See 31 CFR 501.807. If such a petition is granted, the individual's name and all related identifier information are removed from the active SDN List.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. Electronic records are stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

Records related to:

(1) Enforcement, designation, blocking, and other investigations are retrieved by the name of the individual or other relevant search term.

(2) Licensing applications are retrieved by license or letter number or by the name of the applicant.

(3) Blocked property records are retrieved by the name of the holder, custodian, or owner of blocked property.

(4) Claims received, reviewed, and processed by OFAC for payment determinations pursuant to Section 2002 of the Victims of Trafficking and Violence Protection Act of 2000, Public Law Number 106–386, are retrieved by the name of the applicant.

SAFEGUARDS:

Folders maintained in authorized filing equipment are located in areas of limited and controlled access and are limited to authorized Treasury employees. Computerized records are on a password-protected network. Access controls for all internal, electronic information are not less than required by the Treasury Security Manual (TDP–71–10). The published List of Specially Designated Nationals and Blocked Persons is considered public domain.

RETENTION AND DISPOSAL:

Records are managed according to applicable Federal Records Management laws and regulations (see also 5 U.S.C. Part I, Chapter 5, Subchapter II, Section 552a—Records Maintained on Individuals). Record retention and disposition rules are approved by the Archivist of the United States and applied appropriately.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

For records in this system that are unrelated to enforcement, designation, blocking, and other investigations, individuals wishing to be notified if they are named in this system of records must submit a written request containing the following elements: (1) Identify the record system; (2) identify the category and type of record sought; and (3) provide at least two items of secondary identification (date of birth, employee identification number, dates of employment, or similar information). Address inquiries to Assistant Director, Disclosure Services, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

For records in this system that are unrelated to enforcement, designation, blocking, and other investigations, individuals wishing to gain access to records maintained in the system under their name or personal identifier must submit a written request containing the following elements: (1) Identify the record system; (2) identify the category and type of record sought; and (3) provide at least two items of secondary identification (date of birth, employee identification number, dates of employment, or similar information). Address inquiries to Assistant Director, Disclosure Services, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220. The request must be made in accordance with 5 U.S.C. 552a and 31 CFR 1.2. See also 31 CFR part 1, subpart C, appendix A, Paragraph 8.

Records in this system that are related to enforcement, designation, blocking, and other investigations are exempt from the provisions of the Privacy Act as permitted by 5 U.S.C. 552a(k)(2). Exempt records may not be disclosed for purposes of determining if the system contains a record pertaining to a particular individual, inspecting records, or contesting the content of records. Although the investigative records that underlie the SDN List may not be accessed for purposes of inspection or for contest of content of records, the SDN List, which is produced from some of the investigative records in the system, is made public. Persons (entities and individuals) on this public list who wish to request the removal of their name from this list may submit a de-listing petition according to the provisions of 31 CFR 501.807.

RECORD ACCESS PROCEDURES:

Address inquiries to: Assistant Director, Disclosure Services, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See ''Record access procedures'' above.

RECORD SOURCE CATEGORIES:

(1) From the individual, from OFAC investigations, and from other federal, state, local, or foreign agencies;

(2) Applicants for Treasury Department licenses under laws or regulations administered by OFAC;

(3) From individuals and entities that are designated or otherwise subject to sanctions and the representatives of such individuals and entities; or

(4) Custodians or other holders of blocked assets.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records in this system related to enforcement, designation, blocking, and other investigations are exempt from 5 U.S.C. 552a(c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(1) and (k)(2). See 31 CFR 1.36.

TREASURY/DO .144

SYSTEM NAME:

General Counsel Litigation Referral and Reporting System—Treasury/DO.

SYSTEM LOCATION:

U.S. Department of the Treasury, Office of the General Counsel, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are parties, plaintiff or defendant, in civil litigation or administrative proceedings involving or concerning the Department of the Treasury or its officers or employees. The system does not include information on every civil litigation or administrative proceeding involving the Department of the Treasury or its officers and employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records consists of a computer data base containing information related to litigation or administrative proceedings involving or concerning the Department of the Treasury or its officers or employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 31 U.S.C. 301.

PURPOSE(S):

The purposes of this system are: (1) to record service of process and the receipt of other documents relating to litigation or administrative proceedings involving or concerning the Department of the Treasury or its officers or employees; (2) to respond to inquiries from Treasury personnel, personnel from the Justice Department and other agencies, and other persons concerning whether service of process or other documents have been received by the Department in a particular litigation or proceeding; and (3) to keep track of the specific Treasury component assigned to handle a particular litigation or administrative matter.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose information to the Department of Justice (including United States Attorneys' Offices) or other federal agencies conducting litigation or in proceedings before any court or adjudicative or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

a. Treasury or any component thereof;

b. Any employee of Treasury in his/her official capacity;

c. Any employee of Treasury in his/her individual capacity where the Department of Justice or Treasury has agreed to represent the employee; or

d. The United States or any agency thereof.

(2) Disclose pertinent information to appropriate federal, state, or foreign agencies responsible for investigating or prosecuting the violations of, or for implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(3) Disclose information to a federal, state, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(4) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations in response to a court order or in connection with criminal law proceedings;

(5) Disclose information to foreign governments in accordance with formal or informal international agreements;

(6) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(7) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation, and

(8) To appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department 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 the Department'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 stored electronically or on paper in secure facilities in a locked drawer behind a locked door. Electronic records are stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

Records may be retrieved by the name of the non-government party involved in the case, and case number and docket number (when available).

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable Treasury automated systems security and access policies. Strict controls are imposed to minimize the risk of compromising the information that is stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions. Also, Background checks are made on employees.

RETENTION AND DISPOSAL:

The computer information is maintained for up to ten years or more after a record is created.

SYSTEM MANAGER(S) AND ADDRESS:

Office of General Law, Ethics & Regulation, Office of the General Counsel, Department of the Treasury, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or gain access to records maintained in this system must submit a written request containing the following elements: (1) An identification of the record system; and (2) an identification of the category and type of records sought. This system contains records that are exempt under 31 CFR 1.36; 5 U.S.C. 552a(j)(2); and (k)(2). Address inquiries to: Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

RECORD ACCESS PROCEDURES:

Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See ''Record access procedures'' above.

RECORD SOURCE CATEGORIES:

Treasury Department Legal Division, Department of Justice Legal Division.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a(d), (e)(1), (e)(3), (e)(4)(G), (H), (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). (See 31 CFR 1.36)

TREASURY/DO .149

SYSTEM NAME:

Foreign Assets Control Legal Files—Treasury/DO.

SYSTEM LOCATION:

U.S. Department of the Treasury, Office of the Chief Counsel (Foreign Assets Control), 1500 Pennsylvania Ave. NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are or who have been parties in litigation or other matters involving the Office of Foreign Assets Control (OFAC) or involving statutes and regulations administered by the OFAC found at 31 CFR subtitle B, chapter V.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information and documents relating to litigation and other matters involving the OFAC or statutes and regulations administered by the OFAC.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 301; 50 U.S.C. App. 5(b); 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 287(c); and other statutes relied upon by the President to impose economic sanctions.

PURPOSE(S):

These records are maintained to assist in providing legal advice to the OFAC and the Department of the Treasury regarding issues of compliance, enforcement, investigation, and implementation of matters related to OFAC and the statutes and regulations administered by the agency. These records are also maintained to assist in litigation related to OFAC and the statutes and regulations administered by the OFAC.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Prosecute, defend, or intervene in litigation related to the OFAC and statutes and regulations administered by OFAC,

(2) Disclose pertinent information to appropriate federal, state, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license;

(3) Disclose information to a federal, state, or local agency, maintaining civil, criminal, or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's official functions;

(4) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings;

(5) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains, and

(6) To appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department 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 the Department'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 stored electronically or on paper in secure facilities in a locked drawer behind a locked door. Electronic records are stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

Records may be retrieved by name of the non-government party involved in the matter.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable Treasury automated systems security and access policies. Strict controls are imposed to minimize the risk of compromising the information that is stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

Records are periodically updated and maintained as long as needed.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Chief Counsel, Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or gain access to records maintained in this system must submit a written request containing the following elements: (1) Identify the record system; (2) identify the category and type of records sought; and (3) provide identification as set forth in 31 CFR Subpart C, Part 1, Appendix A, Section 8.

RECORD ACCESS PROCEDURES:

Address inquiries to: Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See ''Record access procedures'' above.

RECORD SOURCE CATEGORIES:

Pleadings and other materials filed during course of a legal proceeding, discovery obtained pursuant to applicable court rules; materials obtained by Office of Foreign Assets Control action; material obtained pursuant to requests made to other Federal agencies; orders, opinions, and decisions of courts.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .190

SYSTEM NAME:

Office of Inspector General Investigations Management Information System—Treasury/DO.

SYSTEM LOCATION:

Office of Inspector General (OIG), Assistant Inspector General for Investigations and Counsel to the

Inspector General, 740 15th St. NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(A) Current and former employees of the Department of the Treasury and persons whose association with current and former employees relate to the alleged violations of the rules of ethical conduct for employees of the Executive Branch, the Department's supplemental standards of ethical conduct, the Department's rules of conduct, merit system principles, or any other criminal or civil misconduct, which affects the integrity or facilities of the Department of the Treasury. The names of individuals and the files in their names may be: (1) Received by referral; or (2) initiated at the discretion of the Office of Inspector General in the conduct of assigned duties. Investigations of allegations against OIG employees are managed by the Deputy Inspector General and the Counsel to the Inspector General; records are maintained in the Office of General Counsel.

(B) Individuals who are: Witnesses; complainants; confidential or non-confidential informants; suspects; defendants; parties who have been identified by the Office of Inspector General, constituent units of the Department of the Treasury, other agencies, or members of the general public in connection with the authorized functions of the Inspector General.

(C) Current and former senior Treasury and bureau officials who are the subject of investigations initiated and conducted by the Office of the Inspector General.

CATEGORIES OF RECORDS IN THE SYSTEM:

(A) Letters, memoranda, and other documents citing complaints of alleged criminal or administrative misconduct. (B) Investigative files which include: (1) Reports of investigations to resolve allegations of misconduct or violations of law with related exhibits, statements, affidavits, records or other pertinent documents obtained during investigations; (2) transcripts and documentation concerning requests and approval for consensual telephone and consensual non-telephone monitoring; (3) reports from or to other law enforcement bodies; (4) prior criminal or noncriminal records of individuals as they relate to the investigations; and (5) reports of actions taken by management personnel regarding misconduct and reports of legal actions resulting from violations of statutes referred to the Department of Justice for prosecution.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978, as amended, 5 U.S.C.A. App.3; 5 U.S.C. 301; 31 U.S.C. 321.

PURPOSE(S):

The records and information collected and maintained in this system are used (a) to receive allegations of violations of the standards of ethical conduct for employees of the Executive Branch (5 CFR part 2635), the Treasury Department's supplemental standards of ethical conduct (5 CFR part 3101), the Treasury Department's rules of conduct (31 CFR part 0), the Office of Personnel Management merit system principles, or any other criminal or civil law; and (b) to prove or disprove allegations which the OIG receives that are made against Department of the Treasury employees, contractors and other individuals associated with the Department of the Treasury.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose information to the Department of Justice in connection with actual or potential criminal prosecution or civil litigation;

(2) Disclose pertinent information to appropriate federal, state, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, or where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(3) Disclose information to a federal, state, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant, or other benefit;

(4) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation or settlement negotiations in response to a court order or in connection with criminal law proceedings;

(5) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(6) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings;

(7) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(8) Provide information to the Office of Inspector General of the Department of Justice with respect to investigations involving the former Bureau of Alcohol, Tobacco, and Firearms; and to the Office of Inspector General of the Department of Homeland Security with respect to investigations involving the Secret Service, the former Customs Service, and Federal Law Enforcement Training Center, for such OIG's use in carrying out their obligations under the Inspector General Act of 1978, as amended, 5 U.S.C.A. Appendix 3 and other applicable laws;

(9) Provide information to other OIGs, the Council of Inspectors General on Integrity and Efficiency, and the Department of Justice, in connection with their review of Treasury OIG's exercise of statutory law enforcement authority, pursuant to section 6(e) of the Inspector General Act of 1978, as amended, 5 U.S.C.A. Appendix 3; and

(10) To appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department 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 the Department'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 stored electronically or on paper in secure facilities in a locked drawer behind a locked door. Electronic records are stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

Records may be retrieved alphabetically by name of subject or

complainant, by case number, by special agent name, by employee identifying number, by victim, and by witness case number.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable Treasury automated systems security and access policies. Strict controls are imposed to minimize the risk of compromising the information that is stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions. The records are available to Office of Inspector General personnel who have an appropriate security clearance on a need-to-know basis.

RETENTION AND DISPOSAL:

Investigative records are stored on-site for 3 years at which time they are retired to the Federal Records Center, Suitland, Maryland, for temporary storage. In most instances, the files are destroyed when 10 years old. However, if the records have significant or historical value, they are retained on-site for 3 years, then retired to the Federal Records Center for 22 years, at which time they are transferred to the National Archives and Records Administration for permanent retention. In addition, an automated investigative case tracking system is maintained on-site; the case information deleted 15 years after the case is closed, or when no longer needed, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Investigations, 740 15th St. NW., Suite 500, Washington, DC 20220. For internal investigations: Counsel to the Inspector General, 740 15th St. NW., Suite 510, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Pursuant to 5 U.S. C. 552a(j)(2) and (k)(2), this system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual, or for contesting the contents of a record.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

See ''Categories of individuals'' above. This system contains investigatory material for which sources need not be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). See 31 CFR 1.36.

TREASURY/DO .191

SYSTEM NAME:

Human Resources and Administrative Records System.

SYSTEM LOCATION:

Office of Inspector General (OIG), headquarters and Boston field office.

(See appendix A)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(A) Current and former employees of the Office of Inspector General.

(B) Individuals who are: Witnesses; complainants; confidential or non-confidential informants; suspects; defendants; parties who have been identified by the Office of Inspector General, constituent units of the Department of the Treasury, other agencies, or members of the general public, in connection with the authorized functions of the Inspector General.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Personnel system records contain OIG employee name, positions, grade and series, salaries, and related information pertaining to OIG employment; (2) Tracking records contain status information on audits, investigations and other projects; (3) Timekeeping records contain hours worked and leave taken; (4) Equipment inventory records contain information about government property assigned to employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978, as amended; (5 U.S.C. Appendix 3) 5 U.S.C. 301; and 31 U.S.C. 321.

PURPOSE(S):

The purpose of the system is to: (1) Effectively manage OIG resources and projects; (2) capture accurate statistical data for mandated reports to the Secretary of the Treasury, the Congress, the Office of Management and Budget, the Government Accountability Office, the Council of the Inspectors General on Integrity and Efficiency and other Federal agencies; and (3) provide accurate information critical to the OIG's daily operation, including employee performance and conduct; and (4) collect and maintain information provided to the OIG concerning violation of any criminal or civil law made against or regarding individuals associated or claiming association with the Department of the Treasury.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) A record from the system of records, which indicates, either by itself or in combination with other information, a violation or potential violation of law, whether civil or criminal, and whether arising by statute, regulation, rule or order issued pursuant thereto, may be disclosed to a federal, state, local, or foreign agency or other public authority that investigates or prosecutes or assists in investigation or prosecution of such violation, or enforces or implements or assists in enforcement or implementation of the statute, rule, regulation or order; or to any private entity in order to prevent loss or damage to any party by reason of false or fictitious financial instruments or documents.

(2) A record from the system of records may be disclosed to a federal, state, local, or foreign agency or other public authority, or to private sector (*i.e.,* non-federal, State, or local government) agencies, organizations, boards, bureaus, or commissions, which maintain civil, criminal, or other relevant enforcement records or other pertinent records, such as current licenses in order to obtain information relevant to an agency investigation, audit, or other inquiry, or relevant to a decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, the issuance of a license, grant or other benefit, the establishment of a claim, or the initiation of administrative, civil, or criminal action. Disclosure to the private sector may be made only when the records are properly constituted in accordance with agency requirements; are accurate, relevant, timely and complete; and the disclosure is in the best interest of the Government.

(3) A record from the system of records may be disclosed to a federal, state, local, or foreign agency or other public authority, or private sector (*i.e.,* non-federal, state, or local government) agencies, organizations, boards, bureaus, or commissions, if relevant to the recipient's hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, the issuance of a

license, grant or other benefit, the establishment of a claim, or the initiation of administrative, civil, or criminal action. Disclosure to the private sector may be made only when the records are properly constituted in accordance with agency requirements; are accurate, relevant, timely and complete; and the disclosure is in the best interest of the Government.

(4) A record from the system of records may be disclosed to any source, private or public, to the extent necessary to secure from such source information relevant to a legitimate agency investigation, audit, or other inquiry.

(5) A record from the system of records may be disclosed to the Department of Justice when the agency or any component thereof, or any employee of the agency in his or her official capacity, or any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

(6) A record from the system of records may be disclosed in a proceeding before a court or adjudicative body, when the agency, or any component thereof, or any employee of the agency in his or her official capacity, or any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee, or the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation and the use of such records is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

(7) A record from the system of records may be disclosed to a Member of Congress from the record of an individual in response to an inquiry from the Member of Congress made at the request of that individual.

(8) A record from the system of records may be disclosed to the Department of Justice and the Office of Government Ethics for the purpose of obtaining advice regarding a violation or possible violation of statute, regulation, rule or order or professional ethical standards.

(9) A record from the system of records may be disclosed to the Office of Management and Budget for the purpose of obtaining its advice regarding agency obligations under the Privacy Act, or in connection with the review of private relief legislation.

(10) A record from the system of records may be disclosed in response to a court order issued by a federal agency having the power to subpoena records of other Federal agencies if, after careful review, the OIG determines that the records are both relevant and necessary to the requesting agency's needs and the purpose for which the records will be used is compatible with the purpose for which the records were collected.

(11) A record from the system of records may be disclosed to a private contractor for the purpose of compiling, organizing, analyzing, programming, or otherwise refining records subject to the same limitations applicable to U.S. Department of the Treasury officers and employees under the Privacy Act.

(12) A record from the system of records may be disclosed to a grand jury agent pursuant either to a federal or state grand jury subpoena, or to a prosecution request that such record be released for the purpose of its introduction to a grand jury provided that the Grand Jury channels its request through the cognizant U.S. Attorney, that the U.S. Attorney is delegated the authority to make such requests by the Attorney General, that she or he actually signs the letter specifying both the information sought and the law enforcement purposes served. In the case of a State Grand Jury subpoena, the State equivalent of the U.S. Attorney and Attorney General shall be substituted.

(13) A record from the system of records may be disclosed to a federal agency responsible for considering suspension or debarment action where such record would be relevant to such action.

(14) A record from the system of records may be disclosed to an entity or person, public or private, where disclosure of the record is needed to enable the recipient of the record to take action to recover money or property of the United States Department of the Treasury, where such recovery will accrue to the benefit of the United States, or where disclosure of the record is needed to enable the recipient of the record to take appropriate disciplinary action to maintain the integrity of the programs or operations of the Department of the Treasury.

(15) A record from the system of records may be disclosed to a federal, state, local or foreign agency, or other public authority, for use in computer matching programs to prevent and detect fraud and abuse in benefit programs administered by an agency, to support civil and criminal law enforcement activities of any agency and its components, and to collect debts and over payments owed to any agency and its components.

(16) A record from the system of records may be disclosed to a public or professional licensing organization when such record indicates, either by itself or in combination with other information, a violation or potential violation of professional standards, or reflects on the moral, educational, or professional qualifications of an individual who is licensed or who is seeking to become licensed.

(17) A record from the system of records may be disclosed to the Office of Management and Budget, the Government Accountability Office, the Council of the Inspectors General on Integrity and Efficiency and other Federal agencies for mandated reports.

(18) Disclosures are not made outside of the Department, except to appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department 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 the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Debtor information may also be furnished, in accordance with 5 U.S.C. 552a(b)(12) and 31 U.S.C. 3711(e) to consumer reporting agencies to encourage repayment of an overdue debt.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locker door. Electronic records are stored in magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

Most files are accessed by OIG employee name, employee identifying number, office, or cost center. Some records may be accessed by entering equipment or project information. Financial instrument fraud database information may be accessed by name and address.

SAFEGUARDS:

Access is limited to OIG employees who have a need for such information in the course of their work. Offices are locked. A central network server is password protected by account name and user password. Access to records on electronic media is controlled by computer passwords. Access to specific system records is further limited and controlled by computer security programs limiting access to authorized personnel.

RETENTION AND DISPOSAL:

Records are periodically updated to reflect changes and are retained as long as necessary.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Management, 740 15th St. NW., Suite 510, Washington, DC 20220. For records provided by the general public concerning financial instrument fraud: Counsel to the Inspector General, 740 15th St. NW., Suite 510, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or to gain access to records maintained in this system may inquire in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix A. Individuals must submit a written request containing the following elements: (1) Identify the record system; (2) identify the category and type of records sought; and (3) provide at least two items of secondary identification (date of birth, employee identifying number, dates of employment, or similar information). Address inquiries to Director, Disclosure Services (see ''Record access procedures'' below).

RECORD ACCESS PROCEDURES:

Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

CONTESTING RECORD PROCEDURE:

See ''Record access procedures'' above.

RECORD SOURCE CATEGORIES:

Current and former employees of the OIG; persons providing information concerning or alleged to be committing financial instrument fraud.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Appendix A—Addresses of OIG Offices

Headquarters:

Department of the Treasury, Office of Inspector General, Office of the Assistant Inspector General for Management, 740 15th Street NW., Suite 510, Washington, DC 20220.

Field Location:

Contact System Manager for addresses.

Department of the Treasury, Office of Inspector General, Office of Audit, Boston, MA 02110–3350.

TREASURY/DO .193

SYSTEM NAME:

Employee Locator and Automated Directory System—Treasury/DO.

SYSTEM LOCATION:

Main Treasury Building, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Information on all employees of the Department is maintained in the system if the proper locator card is provided.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, office telephone number, bureau, office symbol, building, room number, home address and phone number, and person to be notified in case of emergency.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

The Employee Locator and Automated Directory System is maintained for the purpose of providing current locator and emergency information on all DO employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures are not made outside of the Department, except to appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department 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 the Department'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 stored electronically or on paper in secure facilities in a locked drawer behind a locked door. Electronic records are stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

Records may be retrieved by name.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable Treasury automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearance or permissions.

RETENTION AND DISPOSAL:

Records are kept as long as needed, updated periodically and destroyed by burning.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Telephone Operator Services Branch, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

See ''System manager'' above.

RECORD ACCESS PROCEDURES:

See ''System manager'' above.

CONTESTING RECORD PROCEDURES:

See ''System manager'' above.

RECORD SOURCE CATEGORIES:

Information is provided by individual employees. Necessary changes made if requested.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .194

SYSTEM NAME:

Circulation System—Treasury.

SYSTEM LOCATION:

Department of the Treasury, Library, Room 1428–MT, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees who borrow library materials or receive library materials on distribution. The system also contains records concerning interlibrary loans to local libraries which are not subject to the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of items borrowed from the Treasury Library collection and patron records are maintained on a central computer. Records are maintained by name of borrower, office locator information, and title of publication.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

Track circulation of library materials and their borrowers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) These records may be used to disclose information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; and

(2) To appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department 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 the Department'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 stored electronically or on paper in secure facilities in a locked drawer behind a locked door. Electronic records are stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

Records may be retrieved by borrower name, bar code number, publication title, or its associated bar code number.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable Treasury automated systems security and access policies. Strict controls are imposed to minimize the risk of compromising the information that is stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

Only current data are maintained on-line. Records for borrowers are deleted when the employee leaves Treasury.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Librarian, Department of the Treasury, Room 1428–MT, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to: Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Patron information records are completed by borrowers and library staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .196

SYSTEM NAME:

Treasury Information Security Program—Treasury/DO.

SYSTEM LOCATION:

Department of the Treasury, Office of Security Programs, Room 3180 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Each Department of the Treasury official, by name and position title, who has been delegated the authority to downgrade and declassify national security information and who is not otherwise authorized to originally classify.

(2) Each Department of the Treasury official, by name and position title, who has been delegated the authority for original classification of national security information, exclusive of officials specifically given this authority via Treasury Order 105–19.

(3) Department of the Treasury employees who have valid security violations as a result of the improper handling/processing, safeguarding or storage of classified information or collateral national security systems.

(4) Department of the Treasury employees (including detailees, interns and select contractors) who receive initial, specialized and/or annual refresher training on requirements for protecting classified information.

(5) Department of the Treasury employees and contractors issued a courier card authorizing them to physically transport classified information within and between Treasury, bureaus, and other U.S. Government agencies and departments.

(6) Departmental Offices officials and bureau heads issued Department of the Treasury credentials as evidence of their authority and empowerment to execute and fulfill the duties of their appointed office and those Departmental Offices officials authorized to conduct official investigations and/or inquiries on behalf of the U.S. Government.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Report of Authorized Downgrading and Declassification Officials, (2) Report of Authorized Classifiers, (3) Record of Security Violation, (4) Security Orientation Acknowledgment, (5) Request and Receipt for Courier Card, and (6) Request and Receipt for Official Credential.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 13526, dated December 29, 2009 and the Treasury Security Manual, TD P 15–71, last updated October 28, 2011.

PURPOSE(S):

The system is designed to (1) oversee compliance with Executive Order

13526, Information Security Oversight Office Directives, the Treasury Security Manual, and Departmental security programs, (2) ensure proper classification of national security information, (3) record details of valid security violations, (4) assist in determining the effectiveness of information security programs affecting classified and sensitive information, and (5) safeguard classified information throughout its entire life-cycle.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

These records may be used to disclose pertinent information to:

(1) Appropriate Federal agencies responsible for the protection of national security information, or reporting a security violation of, or enforcing, or implementing, a statute, rule, regulation, or order, or where the Department becomes aware of an indication of a potential violation of civil or criminal law or regulation, rule or order;

(2) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(3) Another federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a federal agency, when the Federal Government is a party to the judicial or administrative proceeding. In those cases where the Federal Government is not a party to the proceeding, records may be disclosed if a subpoena has been signed by a court of competent jurisdiction;

(4) The United States Department of Justice for the purpose of representing or providing legal advice to the Treasury Department (Department) in a proceeding before a court, adjudicative body, or other administrative body before which the Department is authorized to appear, when such proceeding involves:

(A) The Department or any component thereof;

(B) Any employee of the Department in his or her official capacity;

(C) Any employee of the Department in his or her individual capacity where the Department of Justice or the Department has agreed to represent the employee; or

(D) The United States, when the Department determines that litigation is likely to affect the Department or any of its components, and

(5) Appropriate agencies, entities, and persons when: (a) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise that there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department 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 the Department'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:

Electronic media and hard copy files.

RETRIEVABILITY:

Records may be retrieved by the name of the official or employee, contractor, detailee or intern, bureau head and/or chief deputy official and position title, where appropriate.

SAFEGUARDS:

Secured in security containers and/or controlled space to which access is limited to Office of Security Programs security officials with the need to know.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with General Records Schedule 18, with the exception of the Record of Security Violation (retained for a period of two years) and the Security Orientation Acknowledgment, the Request and Receipt for Courier Card, and the Request and Receipt for Official Credential, the remaining records are destroyed and/or updated on an annual basis. Destruction is effected by on-site shredding or other comparable means.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, (Information Security), Office of Security Programs, Room 3180 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to records maintained in this system, or seek to contest its content, must submit a written request containing the following elements: (1) Identify the record system; (2) identify the category and type of records sought; and (3) provide at least two items of secondary identification (See 31 CFR part 1, Appendix A). Address inquiries to: Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Record access procedures'' above.

RECORD SOURCE CATEGORIES:

The sources of the information are employees of the Department of the Treasury. The information concerning any security violation is reported by Department of the Treasury security officials and by Department of State security officials as concerns Treasury or bureau personnel assigned to overseas U.S. diplomatic posts or missions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .202

SYSTEM NAME:

Drug-Free Workplace Program Records—Treasury/DO.

SYSTEM LOCATION:

Records are located within the Office of Human Capital Strategic Management, Room 5224–MT, Department of the Treasury, Departmental Offices, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of Departmental Offices.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records related to selection, notification, testing of employees, drug test results, and related documentation concerning the administration of the Drug-Free Workplace Program within Departmental Offices.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 100–71; 5 U.S.C. 7301 and 7361; 21 U.S.C. 812; Executive Order 12564, ''Drug-Free Federal Workplace''.

PURPOSE(S):

The system has been established to maintain records relating to the selection, notification, and testing of Departmental Offices' employees for use of illegal drugs and drugs identified in Schedules I and II of 21 U.S.C. 812.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

(1) These records may be disclosed to a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action, and

(2) to appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department 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 the Department'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 stored electronically or on paper in secure facilities in a locked drawer behind a locked door. Electronic records are stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

Records may be retrieved by name of employee, position, title, social security number, I.D. number (if assigned), or any combination of these.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable Treasury automated systems security and access policies. Strict controls are imposed to minimize the risk of compromising the information that is stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions. Procedural and documentary requirements of Public Law 100–71 and the Department of Health and Human Services Guidelines will be followed.

RETENTION AND DISPOSAL:

Records are retained for two years and then destroyed by shredding, or, in case of magnetic media, erasure. Written records and test results may be retained up to five years or longer when necessary due to challenges or appeals of adverse action by the employee.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Human Capital Strategic Management, Department of the Treasury, 1500 Pennsylvania Ave. NW., Room 5224–MT, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the attention of the Director, Disclosure Services, Departmental Offices, 1500 Pennsylvania Ave. NW., Washington, DC 20220. Individuals must furnish their full name, Social Security Number, the title, series and grade of the position they occupied, the month and year of any drug test(s) taken, and verification of identity as required by 31 CFR part 1, subpart C, appendix A.

RECORD ACCESS PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them should address written inquiries to the attention of the Director, Disclosure Services, Departmental Offices, 1500 Pennsylvania Ave. NW., Washington, DC 20220. Individuals must furnish their full name, Social Security Number, the title, series and grade of the position they occupied, the month and year of any drug test(s) taken, and verification of identity as required by 31 CFR part 1, subpart C, appendix A.

CONTESTING RECORDS PROCEDURES:

The Department of the Treasury rules for accessing records, for contesting contents, and appealing initial determinations by the individual concerned are published in 31 CFR part 1, subpart A, appendix A.

RECORD SOURCE CATEGORIES:

Records are obtained from the individual to whom the record pertains; Departmental Offices employees involved in the selection and notification of individuals to be tested; contractor laboratories that test urine samples for the presence of illegal drugs; Medical Review Officers; supervisors and managers and other Departmental Offices official engaged in administering the Drug-Free Workplace Program; the Employee Assistance Program, and processing adverse actions based on drug test results.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .207

SYSTEM NAME:

Waco Administrative Review Group Investigation—Treasury/DO.

SYSTEM LOCATION:

Department of the Treasury, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(A) Individuals who were employees or former employees of the Department of the Treasury and its bureaus and persons whose associations with current and former employees relate to the former Bureau of Alcohol, Tobacco & Firearms execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas on February 28, 1993, or any other criminal or civil misconduct, which affects the integrity or facilities of the Department of the Treasury. The names of individuals and the files in their names may be: (1) Received by referral; or (2) developed in the course of the investigation.

(B) Individuals who were: Witnesses; complainants; confidential or non-confidential informants; suspects; defendants who have been identified by the former Office of Enforcement, constituent units of the Department of the Treasury, other agencies, or members of the general public in connection with the authorized functions of the former Office of Enforcement.

(C) Members of the general public who provided information pertinent to the investigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

(A) Letters, memoranda, and other documents citing complaints of alleged criminal misconduct pertinent to the events leading to the former Bureau of Alcohol, Tobacco & Firearms execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on February 28, 1993.

(B) Investigative files that include:

(1) Reports of investigations to resolve allegations of misconduct or violations of law and to comply with the President's specific directive for a fact finding report on the events leading to the former Bureau of Alcohol, Tobacco & Firearms execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on

February 28, 1993, with related exhibits, statements, affidavits, records or other pertinent documents obtained during investigation;

(2) Transcripts and documentation concerning requests and approval for consensual telephone and consensual non-telephone monitoring;

(3) Reports from or to other law enforcement bodies;

(4) Prior criminal or noncriminal records of individuals as they relate to the investigations;

(5) Reports of actions taken by management personnel regarding misconduct and reports of legal actions resulting from violations of statutes referred to the Department of Justice for prosecution;

(6) Videotapes of events pertinent to the events leading to the former Bureau of Alcohol, Tobacco & Firearms execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on February 28, 1993, or to the Department of Justice criminal prosecutions;

(7) Audiotapes with transcripts of events pertinent to the events leading to the former Bureau of Alcohol, Tobacco & Firearms execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on February 28, 1993, or to the Department of Justice criminal prosecutions;

(8) Photographs and blueprints pertinent to the events leading to the former Bureau of Alcohol, Tobacco & Firearms execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on February 28, 1993, or to the Department of Justice criminal prosecutions; and

(9) Drawings, sketches, models portraying events pertinent to the events leading to the former Bureau of Alcohol, Tobacco & Firearms execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on February 28, 1993, or to the Department of Justice criminal prosecutions.

PURPOSE(S):

The purpose of the system of records was to implement a database containing records of the investigation conducted by the Waco Administrative Review Group, and other relevant information with regard to the events leading to the former Bureau of Alcohol, Tobacco & Firearms execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on February 28, 1993, and, where appropriate, to disclose information to other law enforcement agencies that have an interest in the information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 31 U.S.C. 321.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose information to the Department of Justice in connection with actual or potential criminal prosecution or civil litigation;

(2) Disclose pertinent information to appropriate federal, state, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, or where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(3) Disclose information to a federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information that has requested information relevant to or necessary to the requesting agency's hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant, or other benefit;

(4) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations in response to a court order, where relevant and necessary, or in connection with criminal law proceedings;

(5) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(6) Provide a report to the President and the Secretary of the Treasury detailing the investigation and findings concerning the events leading to the former Bureau of Alcohol, Tobacco & Firearms' execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on February 28, 1993, and

(7) To appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department 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 the Department'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 stored electronically or on paper in secure facilities in a locked drawer behind a locked door. Electronic records are stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

Records may be retrieved alphabetically by name, by number, or other alpha-numeric identifiers.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable Treasury automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

Investigative files are stored on-site for six years and indices to those files are stored on-site for ten years. The word processing disks will be retained indefinitely, and to the extent required they will be updated periodically to reflect changes and will be purged when the information is no longer required. Upon expiration of their respective retention periods, the investigative files and their indices will be transferred to the Federal Records Center, Suitland, Maryland, for storage and in most instances destroyed by burning, maceration or pulping when 20 years old. The files are no longer active.

SYSTEM MANAGER(S) AND ADDRESS:

Department of the Treasury official prescribing policies and practices: Office of the Under Secretary for Enforcement, Room 4312–MT, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals seeking access to any record contained in the system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart c, appendix A. Inquiries should be directed to the Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Individuals who were witnesses; complainants; confidential or non-confidential informants; suspects; defendants, constituents of the Department of the Treasury, other federal, state, or local agencies and members of the public.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .209

SYSTEM NAME:

Personal Services Contracts (PSCs)—Treasury/DO.

SYSTEM LOCATION:

(1) Office of Technical Assistance, Department of the Treasury, 740 15th Street NW., Washington, DC 20005.

(2) Procurement Services Division, Department of the Treasury, Mail stop: 1425 New York Ave., Suite 2100, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been candidates or were awarded a personal services contract (PSC) with the Department of the Treasury.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, telephone number, demographic data, education, contracts, supervisory notes, personnel related information, financial, payroll and medical data and documents pertaining to the individual contractors.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Support for Eastern European Democracy (SEED) Act of 1989 (Pub. L. 101–179), Freedom Support Act (Pub. L. 102–511), Executive Order 12703.

PURPOSE(S):

To maintain records pertaining to the awarding of personal services contracts to individuals for the provision of technical services in support of the SEED Act and the FSA, and which establish an employer/employee relationship with the individual.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to disclose:

(1) Pertinent information to appropriate federal, state, local, or foreign agencies, or other public authority, responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(3) Information to a federal, state, local, or other public authority maintaining civil, criminal, or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(4) Information in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear when: (a) The agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or (d) the United States, when the agency determines that litigation is likely to affect the agency, is party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(5) Information to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains; and

(6) To appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department 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 the Department'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 stored electronically or on paper in secure facilities in a locked drawer behind a locked door. Electronic records are stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

Records may be retrieved by name of the individual contractor and contract number.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable Treasury automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearance or permissions.

RETENTION AND DISPOSAL:

Records are periodically updated when a contract is modified. Contract records, including all biographical or other personal data, are retained for the contract period, with disposal after contract completion in accordance with the Federal Acquisition Regulation 4.805.

SYSTEM MANAGER(S) AND ADDRESS:

(1) Director, Office of Technical Assistance, Department of the Treasury, 740 15th Street NW., Washington, DC 20005.

(2) Director, Procurement Services Division, Department of the Treasury, Mail stop: 1425 New York Ave., Suite 2100, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or to gain access or seek to contest its contents, may inquire in

accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Inquiries should be addressed to the Director, Disclosure Services, Departmental Offices, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedures'' above.

RECORD SOURCE CATEGORIES:

Information is provided by the candidate, individual Personal tractor, and Treasury employees.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .214

SYSTEM NAME:

DC Pensions Retirement Records.

SYSTEM LOCATION:

Office of DC Pensions, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220. Electronic and paper records are also located at the offices of the District of Columbia government and bureaus of the Department, including the Bureau of the Fiscal Service in Parkersburg, WV, and in Kansas City, MO. In addition, certain records are located with contractors engaged by the Department.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(A) Current and former District of Columbia police officers, firefighters, teachers, and judges.

(B) Surviving spouses, domestic partners, children, and/or dependent parents of current and former District of Columbia police officers, firefighters, teachers, or judges, as applicable.

(C) Former spouses and domestic partners of current and former District of Columbia police officers, firefighters, teachers, or judges, as applicable.

(D) Designated beneficiaries of items a, b, and c.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records include, but are not limited to, identifying information such as: Name(s); contact information; Social Security number; employee identification number; service beginning and end dates; annuity beginning and end dates; date of birth; sex; retirement plan; base pay; average base pay; final salary; type(s) of service and dates used to compute length of service; military base pay amount; purchase of service calculation and amount; and/or benefit payment amount(s). The types of records in the system may be:

(a) Documentation comprised of service history/credit, personnel data, retirement contributions, and/or a refund claim upon which a benefit payment(s) may be based.

(b) Medical records and supporting evidence for disability retirement applications and continued eligibility, and documentation regarding the acceptance or rejection of such applications.

(c) Records submitted by a surviving spouse, a child(ren), and/or a dependent parent(s) in support of claims to a benefit payment(s).

(d) Consent forms and other records related to the withholding of income tax from a benefit payment(s).

(e) Retirement applications, including supporting documentation, and acceptance or denial of such applications.

(f) Death claim, including supporting documentation, submitted by a surviving spouse, child(ren), former spouse, and/or beneficiary, that is required to determine eligibility for and receipt of a benefit payment(s), or denial of such claims.

(g) Documentation of enrollment and/or change in enrollment for health and life insurance benefits/eligibility.

(h) Designation(s) of a beneficiary(ies) for a life insurance benefit and/or an unpaid benefit payment.

(i) Court orders submitted by former spouses or domestic partners in support of claims to a benefit payment(s).

(j) Records relating to under- and/or over-payments of benefit payments and other debts arising from the responsibility to administer the retirement plans for District police officers, firefighters, teachers, and judges; and, records relating to other federal debts owed by recipients of federal benefit payments. Records relating to the refunds of employee contributions.

(k) Records relating to child support orders, bankruptcies, tax levies, and garnishments.

(l) Records used to determine a total benefit payment and/or if the benefit payment is a District or federal liability.

(m) Correspondence received from current and former police officers, firefighters, teachers, and judges; including their surviving spouses, domestic partners, children, former spouses, dependent parents, and/or beneficiaries as applicable.

(n) Records relating to time served on behalf of a recognized labor organization.

(o) Records relating to benefit payment enrollment and/or change to enrollment for direct deposit to an individual's financial institution.

(p) Records submitted by a beneficiary in support of claims to a benefit payment.

(q) Records relating to educational program enrollments of age 18 and older children of former police officers, firefighters, teachers, and judges.

(r) Records related to the mental or physical handicap condition of age 18 and older children of former police officers, firefighters, teachers, and judges.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title XI, subtitle A, chapters 1 through 9, and subtitle C, chapter 4, subchapter B of the Balanced Budget Act of 1997 (as amended), Pub L. No. 105–33.

PURPOSE(S):

These records may provide information on which to base determinations of (1) eligibility for, and computation of, benefit payments and refund of contribution payments; (2) direct deposit elections into a financial institution; (3) eligibility and premiums for health insurance and group life insurance; (4) withholding of income taxes; (5) under- or over-payments to recipients of a benefit payment, and for overpayments, the recipient's ability to repay the overpayment; (6) federal payment made from the General Fund to the District of Columbia Pension Fund and the District of Columbia Judicial Retirement and Survivors Annuity Fund (Funds); (7) impact to the Funds due to proposed federal and/or District legislative changes; and (8) District or federal liability for benefit payments to former District police officers, firefighters, and teachers, including survivors, dependents, and beneficiaries who are receiving a federal and/or District benefit.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and the information in these records may be used:

(1) To disclose pertinent information to the appropriate federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Department becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

(2) To disclose information to a federal agency, in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting

of a suitability or security investigation of an individual, the classifying of jobs, 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.

(3) To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

(4) To disclose information to another federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a federal agency, when the federal government is a party to the judicial or administrative proceeding. In those cases where the federal government is not a party to the proceeding, records may not be disclosed unless the party complies with the requirements of 31 CFR 1.11.

(5) To disclose information to the National Archives and Records Administration for use in records management inspections and its role as an Archivist.

(6) To disclose information to the Department of Justice when seeking legal advice, or for use in any proceeding, or to prepare for a proceeding, when any of the following is a party to, has an interest in, or is likely to be affected by the proceeding:

(A) The Department or any component thereof;

(B) Any employee of the Department in his or her official capacity;

(C) Any employee of the Department in his or her individual capacity where the Department of Justice or the Department has agreed to represent the employee; or

(D) The federal funds established by the Act to pay benefit payments.

(7) To disclose information to contractors, subcontractors, financial agents, grantees, auditors, actuaries, interns, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Department, including the District.

(8) To disclose information needed to adjudicate a claim for benefit payments or information needed to conduct an analytical study of benefits being paid under such programs as: Social Security Administration's Old Age, Survivor, and Disability Insurance and Medical Programs; military retired pay programs; and federal civilian employee retirement programs (Civil Service Retirement System, Federal Employees Retirement System, and other federal retirement systems).

(9) To disclose to the U.S. Office of Personnel Management (OPM) and to the District, information necessary to verify the election, declination, or waiver of regular and/or optional life insurance coverage, or coordinate with contract carriers the benefit provisions of such coverage.

(10) To disclose to health insurance carriers contracting with OPM to provide a health benefits plan under the federal Employees Health Benefits Program or health insurance carriers contracting with the District to provide a health benefits plan under the health benefits program for District employees, Social Security numbers and other information necessary to identify enrollment in a plan, to verify eligibility for payment of a claim for health benefits, or to carry out the coordination for benefits provisions of such contracts.

(11) To disclose health insurance enrollment information to OPM. OPM provides this enrollment information to their health care carriers who provide a health benefits plan under the Federal Employees Health Benefits Program, or health insurance carriers contracting with the District to provide a health benefits plan under the health benefits program for District employees, Social Security numbers and other information necessary to identify enrollment in a plan, to verify eligibility for payment of a claim for health benefits, or to carry out the coordination for benefits provisions of such contracts.

(12) To disclose to any person possibly entitled to a benefit payment in accordance with the applicable order of precedence or to an executor of a deceased person's estate, information that is contained in the record of a deceased current or former police officer, firefighter, teacher, or judge to assist in properly determining the eligibility and amount of a benefit payment to a surviving recipient, or information that results from such determination.

(13) To disclose to any person who is legally responsible for the care of an individual to whom a record pertains, or who otherwise has an existing, facially-valid power of attorney, including care of an individual who is mentally incompetent or under other legal disability, information necessary to assure application or payment of benefits to which the individual may be entitled.

(14) To disclose to the Parent Locator Service of the Department of Health and Human Services, upon its request, the present address of an individual covered by the system needed for enforcing child support obligations of such individual.

(15) In connection with an examination ordered by the District or the Department under:

(A) Medical examination procedures; or

(B) Involuntary disability retirement procedures to disclose to the representative of an employee, notices, decisions, other written communications, or any other pertinent medical evidence other than medical evidence about which a prudent physician would hesitate to inform the individual; such medical evidence will be disclosed only to a licensed physician, designated in writing for that purpose by the individual or his or her representative. The physician must be capable of explaining the contents of the medical record(s) to the individual and be willing to provide the entire record(s) to the individual.

(16) To disclose information to any source from which the Department seeks additional information that is relevant to a determination of an individual's eligibility for, or entitlement to, coverage under the applicable retirement, life insurance, and health benefits program, to the extent necessary to obtain the information requested.

(17) To disclose information to the Office of Management and Budget at any stage of the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

(18) To disclose to an agency responsible for the collection of income taxes the information required by an agreement authorized by law to implement voluntary income tax withholdings from benefit payments.

(19) To disclose to the Social Security Administration the names and Social Security numbers of individuals covered by the system when necessary to determine: (1) Their vital status as shown in the Social Security Master Records; and (2) whether retirees receiving benefit payments under the District's retirement plan for police officers and firefighters with post-1956 military service credit are eligible for or are receiving old age or survivors benefits under section 202 of the Social Security Act based upon their wages and self-employment income.

(20) To disclose to federal, state, and local government agencies information to help eliminate fraud and abuse in a benefits program administered by a requesting federal, state, or local government agency; to ensure compliance with federal, state, and local government tax obligations by persons receiving benefits payments; and/or to collect debts and overpayments owed to

the requesting federal, state, or local government agency.

(21) To disclose to a federal agency, or a person or an organization under contract with a federal agency to render collection services for a federal agency as permitted by law, in response to a written request from the head of the agency or his designee, or from the debt collection contractor, data concerning an individual owing a debt to the federal government.

(22) To disclose, as permitted by law, information to a state court or administrative agency in connection with a garnishment, attachment, or similar proceeding to enforce alimony or a child support obligation.

(23) To disclose information necessary to locate individuals who are owed money or property by a federal, state, or local government agency, or by a financial institution or similar institution, to the government agency owing or otherwise responsible for the money or property (or its agent).

(24) To disclose information necessary in connection with the review of a disputed claim for health benefits to a health plan provider participating in the Federal Employees Health Benefits Program or the health benefits program for employees of the District, and to a program enrollee or covered family member or an enrollee or covered family member's authorized representative.

(25) To disclose information to another federal agency for the purpose of effecting administrative or salary offset against a person employed by that agency, or who is receiving or eligible to receive benefit payments from the agency when the Department as a creditor has a claim against that person relating to benefit payments.

(26) To disclose information concerning delinquent debts relating to benefit payments to other federal agencies for the purpose of barring delinquent debtors from obtaining federal loans or loan insurance guarantees pursuant to 31 U.S.C. 3720B.

(27) To disclose to state and local governments information used for collecting delinquent debts relating to benefit payments.

(28) To disclose to appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department 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 the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

(29) To disclose to a former spouse information necessary to explain how his/her former spouse's benefit was computed.

(30) To disclose to a surviving spouse, domestic partner, surviving child, dependent parent, and/or legal guardian information necessary to explain how his/her survivor benefit was computed.

(31) To disclose to a spouse or dependent child (or court-appointed guardian thereof) of an individual covered by the system, upon request, whether the individual (a) changed his/her election from a self-and-family to a self-only health and/or life insurance benefit enrollment,

(b) changed his/her additional survivor benefit election, and/or (c) received a lump-sum refund of his/her retirement contributions.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made from this system to consumer reporting agencies in accordance with 31 U.S.C. 3711(e).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in this system are stored in secure facilities in a locked drawer behind a locked door. Electronic records are stored on magnetic disc, tape, digital media, and CD–ROM in secure facilities.

RETRIEVABILITY:

Records may be retrieved by various combinations of name; date of birth; Social Security number; and/or an automatically assigned, system-generated number of the individual to whom they pertain.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable Treasury automated systems security and access policies. Strict controls are imposed to minimize the risk of compromising the information that is stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

In accordance with National Archives and Records Administration retention schedule N1–056–09–001 records on a claim for retirement, including salary and service history, survivor annuity elections, and tax and other withholdings are destroyed after 115 years from the date of the former police officer's, firefighter's, teacher's or judge's birth; or 30 years after the date of his/her death, if no application for benefits is received. If a survivor or former spouse receives a benefit payment, such record is destroyed after his/her death. All other records covered by this system may be destroyed in accordance with approved District, federal, and Department guidelines. Paper records are destroyed by shredding or burning. Records in electronic media are electronically erased using accepted techniques.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of DC Pensions, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in the system of records, or seeking to contest its contents, should contact the system manager. The system manager will refer the individual to the appropriate point of contact depending on the circumstances of the request. Individuals must furnish the following information for their records to be located and identified:

a. Name, including all former names.
b. Date of birth.
c. Social Security number.
d. Signature.
e. Contact information.

Individuals requesting amendment of their records must also follow the Department's Privacy Act regulations regarding verification of identity and amendment of records (31 CFR part 1 subpart C, appendix A).

RECORD ACCESS PROCEDURES:

See ''Notification procedure,'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure,'' above.

RECORD SOURCE CATEGORIES:

The information in this system is obtained from:

a. The individual to whom the information pertains.

b. District pay, leave, and allowance records.

c. Health benefits and life insurance plan systems records maintained by the Office of Personnel Management, the District, and health and life insurance carriers.

d. Federal civilian retirement systems.

e. Military retired pay system records.

f. Social Security Old Age, Survivor, and Disability Insurance and Medicare Programs.

g. Official personnel folders.

h. The individual's co-workers and supervisors.

i. Physicians who have examined or treated the individual.

j. Surviving spouse, domestic partners, child(ren), former spouse(s), former domestic partner(s), and/or dependent parent(s) of the individual to whom the information pertains.

k. State courts or support enforcement agencies.

l. Credit bureaus and financial institutions.

m. Government Offices of the District of Columbia, including the DC Retirement Board.

n. The General Services Administration National Payroll Center.

o. Educational institutions.

p. Other components of the Department of the Treasury.

q. The Department of Justice.

r. Death reporting sources

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .216

SYSTEM NAME:

Treasury Security Access Control and Certificates Systems.

SYSTEM LOCATION:

Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Treasury employees, contractors, media representatives, other individuals requiring access to Treasury facilities or to receive government property, and those who need to gain access to a Treasury DO cyber asset including the network, LAN, desktops and notebooks.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's application for security/access badge, individual's photograph, fingerprint record, special credentials, allied papers, registers, and logs reflecting sequential numbering of security/access badges. The system also contains information needed to establish accountability and audit control of digital certificates that have been assigned to personnel who require access to Treasury DO cyber assets including the DO network and LAN as well as those who transmit electronic data that requires protection by enabling the use of public key cryptography. It also contains records that are needed to authorize an individual's access to a Treasury network.

Records may include the individual's name, organization, work telephone number, Social Security Number, date of birth, Electronic Identification Number, work email address, username and password, country of birth, citizenship, clearance and status, title, home address and phone number, biometric data including fingerprint minutia, and alias names.

Records on the creation, renewal, replacement or revocation of digital certificates, including evidence provided by applicants for proof of identity and authority, sources used to verify an applicant's identity and authority, and the certificates issued, denied and revoked, including reasons for denial and revocation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 31 U.S.C. 321; the Electronic Signatures in Global and National Commerce Act, Pub. L. 106–229, and E.O. 9397 (SSN).

PURPOSE(S):

The purpose is to: Improve security to both Treasury DO physical and cyber assets; maintain records concerning the security/access badges issued; restrict entry to installations and activities; ensure positive identification of personnel authorized access to restricted areas; maintain accountability for issuance and disposition of security/access badges; maintain an electronic system to facilitate secure, on-line communication between Federal automated systems, between Federal employees or contractors, and/or the public, using digital signature technologies to authenticate and verify identity; provide a means of access to Treasury cyber assets including the DO network, LAN, desktop and laptops; and to provide mechanisms for non-repudiation of personal identification and access to DO sensitive cyber systems including but not limited to human resource, financial, procurement, travel and property systems as well as tax, econometric and other mission critical systems. The system also maintains records relating to the issuance of digital certificates utilizing public key cryptography to employees and contractors for the purpose of transmission of sensitive electronic material that requires protection.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to disclose information to:

(1) Appropriate federal, state, local, and foreign agencies for the purpose of enforcing and investigating administrative, civil or criminal law relating to the hiring or retention of an employee; issuance of a security clearance, license, contract, grant or other benefit;

(2) A court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of or in preparation for civil discovery, litigation, or settlement negotiations, in response to a court order where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(3) A contractor for the purpose of compiling, organizing, analyzing, programming, or otherwise refining records to accomplish an agency function subject to the same limitations applicable to U.S. Department of the Treasury officers and employees under the Privacy Act;

(4) A Congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(5) Third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(6) The Office of Personnel Management, Merit Systems Protection Board, Equal Employment Opportunity Commission, Federal Labor Relations Authority, and the Office of Special Counsel for the purpose of properly administering Federal personnel systems or other agencies' systems in accordance with applicable laws, Executive Orders, and regulations;

(7) Representatives of the National Archives and Records Administration (NARA) who are conducting records management inspections under authority of 44 U.S.C. 2904 and 2906;

(8) Other Federal agencies or entities when the disclosure of the existence of the individual's security clearance is needed for the conduct of government business, and

(9) To appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the

suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department 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 the Department'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 as electronic media and paper records.

RETRIEVABILITY:

Records may be retrieved by individual's name, social security number, electronic identification number and/or access/security badge number.

SAFEGUARDS:

Entrance to data centers and support organization offices is restricted to those employees whose work requires them to be there for the system to operate. Identification (ID) cards are verified to ensure that only authorized personnel are present. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols which are periodically changed. Reports produced from the remote printers are in the custody of personnel and financial management officers and are subject to the same privacy controls as other documents of like sensitivity. Access is limited to authorized employees. Paper records are maintained in locked safes and/or file cabinets. Electronic records are password-protected. During non-work hours, records are stored in locked safes and/or cabinets in a locked room.

Protection and control of any sensitive but unclassified (SBU) records are in accordance with TD P 71–10, Department of the Treasury Security Manual. Access to the records is available only to employees responsible for the management of the system and/or employees of program offices who have a need for such information.

RETENTION AND DISPOSAL:

In accordance with General Records Schedule 18, records are maintained on government employees and contractor employees for the duration of their employment at the Treasury Department. Records on separated employees are destroyed or sent to the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Departmental Offices:

a. Director, Office of Security Programs, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

b. Chief Information Officer, 1750 Pennsylvania Ave. NW., Washington, DC 20006.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in the system of records, or seeking to contest its content, may inquire in accordance with instructions pertaining to individual Treasury components appearing at 31 CFR part 1, subpart C, appendix A.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

The information contained in these records is provided by or verified by the subject individual of the record, supervisors, other personnel documents, and non-Federal sources such as private employers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .217

SYSTEM NAME:

National Financial Literacy Challenge Records—Treasury/DO.

SYSTEM LOCATION:

Department of the Treasury, Office of Financial Education, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system will be:

- High school students age 13 and older, and
- their teachers who participate in the test.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system of records will include, for Challenge participants, the high schools' names and addresses; students' names and scores; high school names of award winners; teachers' names, teachers' business email addresses and business phone numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and Executive Order 13455.

PURPOSE(S):

The records in this system will be used to identify students whose scores on the Challenge meet the guidelines for award recognition and to distribute the awards to the teachers, who in turn will distribute the awards to the students. Aggregate data and reports related to the program that may be generated and used for analysis will be in a form that is not individually identifiable.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

These records may be used to disclose information to:

(1) A court, magistrate, or administrative tribunal, in the course of presenting evidence, including disclosures to opposing counsel or witnesses, for the purpose of civil discovery, litigation, or settlement negotiations or in response to a court order, where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(2) A congressional office in response to an inquiry made at the request of the individual (or the individual's parents or guardians) to whom the record pertains;

(3) A contractor or a sponsor, operating in conjunction with the Office of Financial Education to the extent necessary to present appropriate awards;

(4) Appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department 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 the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm, and

(5) These records may be used to disclose award winners to the participant's high school.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. Electronic records are stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

Students' scores may be retrieved by name, teacher, and school. Teacher data may be retrieved by name and contact information of the teacher. School information may be retrieved by name and location of the school.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable Treasury automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. All official access to the system of records is on a need-to-know basis only, as authorized by the Office of Financial Education of the U.S. Treasury Department. Procedural and physical safeguards, such as personal accountability, audit logs, and specialized communications security, will be used. Each user of computer systems containing records will have individual passwords (as opposed to group passwords) for which the user is responsible. Access to computerized records will be limited, through use of access codes, encryption techniques, and/or other internal mechanisms, to those whose official duties require access.

RETENTION AND DISPOSAL:

Records will be destroyed at the earliest possible date consistent with applicable records retention policies.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Outreach, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to records maintained in this system, or seek to contest its content, must submit a written request containing the following elements: (1) Identify the record system; (2) identify the category and type of records sought; and (3) provide at least two items of secondary identification (See 31 CFR part 1, appendix A). Address inquiries to: Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

RECORDS ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORDS PROCEDURES:

See ''Notification procedure'' above.

RECORDS SOURCE CATEGORIES:

Student test takers; high school points of contact; and Department of the Treasury records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .218

SYSTEM NAME:

Making Home Affordable Program—Treasury/DO.

SYSTEM LOCATION:

The Office of Financial Stability, Department of the Treasury, Washington, DC. Other facilities that maintain this system of records are located in: Urbana, MD, Dallas, TX, and a backup facility located in Reston, VA, all belonging to the Federal National Mortgage Association (Fannie Mae); in McLean, VA, Herndon, VA, Reston, VA, Richardson, TX, and Denver, CO, facilities operated by or on behalf of the Federal Home Loan Mortgage Corporation (Freddie Mac); and facilities operated by or on behalf of the Bank of New York Mellon (BNYM) in Nashville, TN, and a backup facility located in Somerset, NJ. Fannie Mae, Freddie Mac and Bank of New York Mellon have been designated as Financial Agents (Financial Agents) for the MHA Program.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system of records contains information about mortgage borrowers that is submitted to the Department or its Financial Agents by loan servicers that participate in the MHA Program. Information collected pursuant to the MHA Program is subject to the Privacy Act only to the extent that it concerns individuals; information pertaining to corporations and other business entities and organizations is not subject to the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains loan-level information about individual mortgage borrowers (including loan records, financial records, and borrower eligibility records, when appropriate). Typically, these records include, but are not limited to, the individual's name, Social Security Number, mailing address, monthly income, criminal history status as referenced in Section 1481 of the Dodd-Frank statute, the location of the property subject to the loan, property value information, payment history, type of mortgage, and property sale information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Emergency Economic Stabilization Act of 2008 (Pub. L. 110–343) and Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203) (2010).

PURPOSE(S):

The purpose of this system of records is to facilitate administration of the MHA Program by the Department and its Financial Agents, including enabling them to (i) collect and utilize information collected from mortgage loan servicers, including loan-level information about individual mortgage holders and borrower eligibility; and (ii) produce reports on the performance of the MHA Program, such as reports that concern loan modification eligibility and exception reports that identify certain issues that loan servicers may experience with servicing loans.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose pertinent information to appropriate federal, state, local, or foreign agencies responsible for investigating or prosecuting violations of or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a potential violation of civil or criminal law or regulation;

(2) Disclose information to a federal, state, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a court order where arguably relevant to a proceeding, or in connection with criminal law proceedings;

(4) Provide information to a Congressional office in response to an

inquiry made at the request of the individual to whom the record pertains;

(5) Provide information to third parties during the course of a Department investigation as it relates to the MHA Program to the extent necessary to obtain information pertinent to that investigation;

(6) Disclose information to a consumer reporting agency to use in obtaining credit reports;

(7) Disclose information to a debt collection agency for use in debt collection services;

(8) Disclose information to a Financial Agent of the Department, its employees, agents, and contractors, or to a contractor of the Department, for the purpose of assessing the quality of and efficient administration of the MHA Program and compliance with relevant guidelines, agreements, directives and requirements, and subject to the same or equivalent limitations applicable to the Department's officers and employees under the Privacy Act;

(9) Disclose information originating or derived from participating loan servicers back to the same loan servicers as needed, for the purposes of audit, quality control, and reconciliation and response to borrower requests about that same borrower;

(10) Disclose information to Financial Agents, financial institutions, financial custodians, and contractors to: (a) Process mortgage loan modification applications, including, but not limited to, enrollment forms; (b) implement, analyze and modify programs relating to the MHA Program; (c) investigate and correct erroneous information submitted to the Department or its Financial Agents; (d) compile and review data and statistics and perform research, modeling and data analysis to improve the quality of services provided under the MHA Program or otherwise improve the efficiency or administration of the MHA Program; or (e) develop, test and enhance computer systems used to administer the MHA Program; with all activities subject to the same or equivalent limitations applicable to the Department's officers and employees under the Privacy Act;

(11) Disclose information to financial institutions, including banks and credit unions, for the purpose of disbursing payments and/or investigating the accuracy of information required to complete transactions pertaining to the MHA Program and for administrative purposes, such as resolving questions about a transaction;

(12) Disclose information to the appropriate Federal financial regulator or State financial regulator, or to the appropriate Consumer Protection agency, if that agency has jurisdiction over the subject matter of a complaint or inquiry, or the entity that is the subject of the complaint or inquiry;

(13) Disclose information and statistics to the Department of Housing & Urban Development (HUD), the Department of Commerce (Commerce), Federal financial regulators, the U.S. Department of Justice (DOJ), and the Federal Housing Finance Agency to assess the quality and efficiency of services provided under the MHA Program, to ensure compliance with the MHA Program and other laws, and to report on the Program's overall execution and progress;

(14) Disclose information to appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department 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 the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(15) Disclose information to the DOJ for its use in providing legal advice to the Department or in representing the Department in a proceeding before a court, adjudicative body, or other administrative body before which the Department is authorized to appear, where the use of such information by the DOJ is deemed by the Department to be relevant and necessary to the litigation, and such proceeding names as a party of interests:

(a) The Department or any component thereof, including the Office of Financial Stability (OFS);

(b) Any employee of the Department in his or her official capacity;

(c) Any employee of the Department in his or her individual capacity where DOJ has agreed to represent the employee; or

(d) The United States, where the Department determines that litigation is likely to affect the Department or any of its components, including OFS; and

(16) Disclose information to an authorized recipient who has assured the Department or a Financial Agent of the Department in writing that the record will be used solely for research purposes designed to assess the quality of and efficient administration of the MHA Program, subject to the same or equivalent limitations applicable to the Department's officers and employees under the Privacy Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information contained in the system of records is stored in a transactional database and an operational data store. Information from the system will also be captured in hard-copy form and stored in filing cabinets managed by personnel working on the MHA Program.

RETRIEVABILITY:

Information about individuals may be retrieved from the system by reference including the mortgage borrower's name, Social Security Number, address, criminal history status, or loan number.

SAFEGUARDS:

Safeguards designed to protect information contained in the system against unauthorized disclosure and access include, but are not limited to: (i) Department and Financial Agent policies and procedures governing privacy, information security, operational risk management, and change management; (ii) requiring Financial Agent employees to adhere to a code of conduct concerning the aforementioned policies and procedures; (iii) conducting background checks on all personnel with access to the system of records; (iv) training relevant personnel on privacy and information security; (v) tracking and reporting incidents of suspected or confirmed breaches of information concerning borrowers; (vi) establishing physical and technical perimeter security safeguards; (vii) using antivirus and intrusion detection software; (viii) performing risk and controls assessments and mitigation, including production readiness reviews; (ix) establishing security event response teams; and (x) establishing technical and physical access controls, such as role-based access management and firewalls. Loan servicers that participate in the MHA Program (i) have agreed in writing that the information they provide to the Department or to its Financial Agents is accurate, and (ii) have submitted a ''click through'' agreement on a Web site requiring the loan servicer to provide accurate information in connection with using the Program Web site. In addition, the Department's Financial Agents will

conduct loan servicer compliance reviews to validate data collection controls, procedures, and records.

RETENTION AND DISPOSAL:

Information is retained in the system on back-up tapes or in hard-copy form for seven years, except to the extent that either (i) the information is subject to a litigation hold or other legal retention obligation, in which case the data is retained as mandated by the relevant legal requirements, or (ii) the Department and its Financial Agents need the information to carry out the Program. Destruction is carried out by degaussing according to industry standards. Hard copy records are shredded and recycled.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Assistant Secretary, Fiscal Operations and Policy, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, to gain access to records maintained in this system, or to amend or correct information maintained in this system, must submit a written request to do so in accordance with the procedures set forth in 31 CFR 1.26–.27. Address such requests to: Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURE:

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

Information about mortgage borrowers contained in the system of records is obtained from loan servicers who participate in the MHA Program, or developed by the Department and its Financial Agents in connection with the MHA Program. Information is not obtained directly from individual mortgage borrowers to whom the information pertains.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .219

SYSTEM NAME:

TARP Standards for Compensation and Corporate Governance—Executive Compensation Information.

SYSTEM LOCATION:

Office of Financial Stability, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Senior Executive Officers or ''SEOs.'' SEOs of TARP recipients will be covered by the system. The term ''SEO'' means an employee of the TARP recipient who is a ''named executive officer,'' as that term is defined by Instruction 1 to Item 402(a)(3) of Regulation S–K of the Federal securities laws. 17 CFR 229.402(a). A TARP recipient that is a ''smaller reporting company,'' as that term is defined by Item 10 of Regulation S–K, 17 CFR 229.10, is required to identify SEOs consistent with the immediately preceding sentence. A TARP recipient that is a ''smaller reporting company'' must identify at least five SEOs, even if only three named executive officers are provided in the disclosure pursuant to Item 402(m)(2) of Regulation S–K, 17 CFR 229.402(m)(2), provided that no employee must be identified as an SEO if the employee's total annual compensation does not exceed $100,000 as defined in Item 402(a)(3)(1) of Regulation S–K. 17 CFR 229.402(a)(3)(1).

b. Most highly compensated employees. Most highly compensated employees of TARP recipients will be covered by the system. The term ''most highly compensated employee'' means the employee of the TARP recipient whose annual compensation is determined to be the highest among all employees of the TARP recipient, provided that, for this purpose, a former employee who is no longer employed as of the first day of the relevant fiscal year of the TARP recipient is not a most highly compensated employee unless it is reasonably anticipated that such employee will return to employment with the TARP recipient during such fiscal year.

c. Other employees. Certain other employees of TARP recipients may be covered by the system in the event that the TARP recipient or the employee requests guidance from the Department with respect to the employee's compensation or the Department otherwise provides guidance with respect to the employee's compensation.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records include, but are not limited to, identifying information such as:

- Name(s), employer;
- employee identification number,
- position, and quantitative and qualitative information with respect to the employee's performance.

The types of records in the system may be:

- Comprehensive compensation data provided by the individual's employer for current and prior years.
- Information relating to compensation plan design and documentation.
- Company performance data relating to compensation plans.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system of records is authorized by 31 U.S.C. 321 as well as section 111 of the Emergency Economic Stabilization Act of 2008 (''EESA''), as amended by the American Recovery and Reinvestment Act of 2009 (''ARRA''). 12 U.S.C. 5221.

PURPOSE(S):

The Department of the Treasury collects this information from each TARP recipient in connection with the review of compensation payments and compensation structures applicable to SEOs and certain highly compensated employees. Information with respect to certain payments to highly compensated employees will also be reviewed in connection with a determination of whether such payments were inconsistent with the purposes of section 111 of EESA or TARP, or were otherwise contrary to the public interest.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used:

1. To disclose pertinent information to the appropriate federal, state, or local agency responsible for investigating or prosecuting a violation of, or enforcing or implementing, a statute, rule, regulation, or order, where the Department becomes aware of a potential violation of civil or criminal law or regulation, rule, or order.

2. To provide information to a Congressional office from the record of an individual in response to an inquiry from that Congressional office made at the request of the individual who is the subject of the record.

3. To disclose information to another federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a federal agency, when the Federal Government is a party to the judicial or administrative proceeding. In those cases where the Federal Government is not a party to the proceeding, records may be disclosed if

a subpoena has been signed by a court of competent jurisdiction and agency ''Touhy'' regulations are followed. See 31 CFR 1.8 *et seq.*

4. To disclose information to the National Archives and Records Administration (NARA) for use in its records management inspections and its role as an archivist.

5. To disclose information to the United States Department of Justice (''DOJ''), for the purpose of representing or providing legal advice to the Department in a proceeding before a court, adjudicative body, or other administrative body before which the Department is authorized to appear, when such proceeding involves:

(A) The Department or any component thereof;

(B) Any employee of the Department in his or her official capacity;

(C) Any employee of the Department in his or her individual capacity where the Department of Justice or the Department has agreed to represent the employee; or

(D) The United States, when the Department determines that litigation is likely to affect the Department or any of its components; and the use of such records by the DOJ is deemed by the DOJ or the Department to be relevant and necessary to the litigation provided that the disclosure is compatible with the purpose for which records were collected.

6. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Department, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to Department officers and employees.

7. To appropriate agencies, entities, and persons when: (a) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise that there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department 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 the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

8. In limited circumstances, for the purpose of compiling or otherwise refining records that may be disclosed to the public in the form of summary reports or other analyses provided on a Department Web site.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. Electronic records are stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

These records may be retrieved by various combinations of employer name, individual name, position and/or level of compensation.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable Treasury automated systems security and access policies. Strict controls are imposed to minimize the risk of compromising the information that is stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions. Data in electronic format is encrypted or password protected. Direct access is limited to employees within the Office of Financial Stability whose duties require access. The building where the records are maintained is locked after hours and has a 24-hour security guard. Personnel screening and training are employed to prevent unauthorized disclosure.

RETENTION AND DISPOSAL:

The records will be maintained indefinitely until a record disposition schedule submitted to the National Archives Records Administration has been approved.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Compliance, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in the system of records, or seeking to contest its contents, should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Employer.

c. Signature.

d. Contact information.

[Individuals requesting amendment of their records must also follow the Department's Privacy Act regulations regarding verification of identity and amendment of records (31 CFR part 1 subpart C, appendix A).]

RECORD ACCESS PROCEDURES:

See ''Notification procedure,'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure,'' above.

RECORD SOURCE CATEGORIES:

The information in this system is obtained from the individual's employer.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .220

SYSTEM NAME:

SIGTARP Hotline Database.

SYSTEM LOCATION:

Office of the Special Inspector General for the Troubled Asset Relief Program (SIGTARP), 1801 L Street NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Complainants who contact the SIGTARP Hotline.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Correspondence received from Hotline complainants; (2) records created of verbal communications with Hotline complainants; and (3) records used to process Hotline complaints, including information included in SIGTARP's other systems of records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 5231, 5 U.S.C. App. 3, and 5 U.S.C. 301.

PURPOSE(S):

This system consists of complaints received by SIGTARP from individuals and their representatives, oversight committees, and others who conduct business with SIGTARP, and information concerning efforts to resolve these complaints; it serves as a record of the complaints and the steps taken to resolve them.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose pertinent information to appropriate Federal, foreign, State, local, Tribal or other public authorities or self-regulatory organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a potential violation of civil or criminal law or regulation;

(2) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(3) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(4) Disclose information to another federal agency to (a) permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency, or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment or correction of records;

(5) Disclose information to the Department of Justice when seeking legal advice, or when (a) the agency or (b) any component thereof, or (c) any employee of the agency in his or her official capacity, or (d) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (e) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation;

(6) Disclose information to the appropriate foreign, State, local, Tribal, or other public authority or self-regulatory organization for the purpose of (a) consulting as to the propriety of access to or amendment or correction of information obtained from that authority or organization, or (b) verifying the identity of an individual who has requested access to or amendment or correction of records;

(7) Disclose information to contractors and other agents who have been engaged by the Department or one of its bureaus to provide products or services associated with the Department's or bureau's responsibility arising under the FOIA/PA;

(8) Disclose information to the National Archives and Records Administration for use in records management inspections;

(9) Disclose information to appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department 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 the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(10) Disclose information to any source, either private or governmental, to the extent necessary to elicit information relevant to a SIGTARP audit or investigation;

(11) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing personnel actions or conducting administrative hearings or appeals, or if needed in the performance of other authorized duties;

(12) In situations involving an imminent danger of death or physical injury, disclose relevant information to an individual or individuals who are in danger; and

(13) Disclose information to persons engaged in conducting and reviewing internal and external peer reviews of the Office of Inspector General to ensure adequate internal safeguards and management procedures exist within any office that had received law enforcement authorization or to ensure auditing standards applicable to government audits by the Comptroller General of the United States are applied and followed.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPENSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. Electronic records are stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

Records may be retrieved by name of the correspondent and/or name of the individual to whom the record applies.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable Treasury automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. The records are accessible to SIGTARP personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons.

RETENTION AND DISPOSAL:

Paper records are maintained and disposed of in accordance with a record disposition schedule 12 approved by the National Archives Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Counsel, Office of the Special Inspector General for the Troubled Asset Relief Program (SIGTARP), 1801 L Street NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. This system of records may contain records that are exempt from the notification, access, and contesting records requirements pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

RECORD ACCESS PROCEDURES:

Address inquiries to: Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' above.

RECORD SOURCE CATEGORIES:

Some records contained within this system of records are exempt from the requirement that the record source categories be disclosed pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Some records contained within this system of records are exempt from 5 U.S.C. 552a (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). See 31 CFR 1.36.

TREASURY/DO .221

SYSTEM NAME:

SIGTARP Correspondence Database.

SYSTEM LOCATION:

Office of the Special Inspector General for the Troubled Asset Relief Program (SIGTARP), 1801 L Street NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

- (1) correspondents; and
- (2) persons upon whose behalf correspondence was initiated.

CATEGORIES OF RECORDS IN THE SYSTEM:

- (1) Correspondence received by SIGTARP and responses generated thereto; and
- (2) records used to respond to incoming correspondence,
- including information included in SIGTARP's other systems of records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 5231, 5 U.S.C. App. 3, and 5 U.S.C. 301.

PURPOSE(S):

This system consists of correspondence received by SIGTARP from individuals and their representatives, oversight committees, and others who conduct business with SIGTARP and the responses thereto; it serves as a record of in-coming correspondence and the steps taken to respond thereto.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose pertinent information to appropriate Federal, foreign, State, local, Tribal or other public authorities or self-regulatory organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(3) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(4) Disclose information to another federal agency to (a) permit a decision as to access, amendment or correction of records made in consultation with or by that agency, or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment or correction of records;

(5) Disclose information to the Department of Justice when seeking legal advice, or when (a) the agency or (b) any component thereof, or (c) any employee of the agency in his or her official capacity, or (d) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (e) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation;

(6) Disclose information to the appropriate foreign, State, local, Tribal, or other public authority or self-regulatory organization for the purpose of (a) consulting as to the propriety of access to or amendment or correction of information obtained from that authority or organization, or (b) verifying the identity of an individual who has requested access to or amendment or correction of records;

(7) Disclose information to contractors and other agents who have been engaged by the Department or one of its bureaus to provide products or services associated with the Department's or bureau's responsibility arising under the FOIA/PA;

(8) Disclose information to the National Archives and Records Administration for use in records management inspections;

(9) Disclose information to appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department 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 the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(10) Disclose information to any source, either private or governmental, to the extent necessary to elicit information relevant to a SIGTARP audit or investigation;

(11) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing personnel actions or conducting administrative hearings or appeals, or if needed in the performance of other authorized duties;

(12) In situations involving an imminent danger of death or physical injury, disclose relevant information to an individual or individuals who are in danger; and

(13) Disclose information to persons engaged in conducting and reviewing internal and external peer reviews of the Office of Inspector General to ensure adequate internal safeguards and management procedures exist within any office that had received law enforcement authorization or to ensure auditing standards applicable to government audits by the Comptroller General of the United States are applied and followed.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPENSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. Electronic records are stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

Records may be retrieved by name of the correspondent and/or name of the individual to whom the record applies.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable Treasury automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. The

records are accessible to SIGTARP personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons.

RETENTION AND DISPOSAL:

Paper records are maintained and disposed of in accordance with a record disposition schedule 12 approved by the National Archives Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Counsel, Office of the Special Inspector General for the Troubled Asset Relief Program (SIGTARP), 1801 L Street NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. This system of records may contain records that are exempt from the notification, access, and contesting records requirements pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

RECORD ACCESS PROCEDURES:

Address inquiries to: Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' above.

RECORD SOURCE CATEGORIES:

Some records contained within this system of records are exempt from the requirement that the record source categories be disclosed pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Some records contained within this system of records are exempt from 5 U.S.C. 552a (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). See 31 CFR 1.36.

TREASURY/DO .222

SYSTEM NAME:

SIGTARP Investigative MIS Database.

SYSTEM LOCATION:

Office of the Special Inspector General for the Troubled Asset Relief Program (SIGTARP), 1801 L Street NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

- Subjects or potential subjects of investigative activities;
- witnesses involved in investigative activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) reports of investigations, which may include, but are not limited to, witness statements, affidavits, transcripts, police reports, photographs, documentation concerning requests and approval for consensual telephone and consensual non-telephone monitoring, the subject's prior criminal record, vehicle maintenance records, medical records, accident reports, insurance policies, police reports, and other exhibits and documents collected during an investigation;

(2) status and disposition information concerning a complaint or investigation including prosecutive action and/or administrative action;

(3) complaints or requests to investigate;

(4) subpoenas and evidence obtained in response to a subpoena;

(5) evidence logs;

(6) pen registers;

(7) correspondence;

(8) records of seized money and/or property;

(9) reports of laboratory examination, photographs, and evidentiary reports;

(10) digital image files of physical evidence;

(11) documents generated for purposes of SIGTARP's undercover activities;

(12) documents pertaining to the identity of confidential informants; and,

(13) other documents collected and/or generated by the Office of Investigations during the course of official duties.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 5231, 5 U.S.C. App. 3, and 5 U.S.C. 301.

PURPOSE(S):

The purpose of this system of records is to maintain information relevant to complaints received by SIGTARP and collected as part of investigations conducted by SIGTARP's Office of Investigations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose pertinent information to appropriate Federal, foreign, State, local, Tribal or other public authorities or self-regulatory organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a potential violation of civil or criminal law or regulation;

(2) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(3) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(4) Disclose information to another federal agency to (a) permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency, or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment or correction of records;

(5) Disclose information to the Department of Justice when seeking legal advice, or when (a) the agency or (b) any component thereof, or (c) any employee of the agency in his or her official capacity, or (d) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (e) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation;

(6) Disclose information to the appropriate foreign, State, local, Tribal, or other public authority or self-regulatory organization for the purpose of (a) consulting as to the propriety of access to or amendment or correction of information obtained from that authority or organization, or (b) verifying the identity of an individual who has requested access to or amendment or correction of records;

(7) Disclose information to contractors and other agents who have been engaged by the Department or one of its bureaus to provide products or services associated with the Department's or bureau's responsibility arising under the FOIA/PA;

(8) Disclose information to the National Archives and Records Administration for use in records management inspections;

(9) Disclose information to appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department 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 the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(10) Disclose information to any source, either private or governmental, to the extent necessary to elicit information relevant to a SIGTARP audit or investigation;

(11) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing personnel actions or conducting administrative hearings or appeals, or if needed in the performance of other authorized duties;

(12) In situations involving an imminent danger of death or physical injury, disclose relevant information to an individual or individuals who are in danger; and

(13) Disclose information to persons engaged in conducting and reviewing internal and external peer reviews of the Office of Inspector General to ensure adequate internal safeguards and management procedures exist within any office that had received law enforcement authorization or to ensure auditing standards applicable to Government audits by the Comptroller General of the United States are applied and followed.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPENSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. Electronic records are stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITIY:

Records may be retrieved by name, Social Security Number, and/or case number.

SAFEGUARDS:

The records are accessible to SIGTARP personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons.

RETENTION AND DISPOSAL:

These records are currently not eligible for disposal. SIGTARP is in the process of requesting approval from the National Archives and Records Administration of records disposition schedules concerning all records in this system of records.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Counsel, Office of the Special Inspector General for the Troubled Asset Relief Program (SIGTARP), 1801 L Street NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Written inquiries should be addressed to the Chief Counsel, Office of the Special Inspector General for the Troubled Asset Relief Program (SIGTARP), 1801 L Street NW., Washington, DC 20220. This system of records may contain records that are exempt from the notification, access, and contesting records requirements pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

RECORD ACCESS PROCEDURES:

Address inquiries to: Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' above.

RECORD SOURCE CATEGORIES:

Some records contained within this system of records are exempt from the requirement that the record source categories be disclosed pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Some records contained within this system of records are exempt from 5 U.S.C. 552a (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2).

TREASURY/DO .223

SYSTEM NAME:

SIGTARP Investigative Files Database.

SYSTEM LOCATION:

Office of the Special Inspector General for the Troubled Asset Relief Program (SIGTARP), 1801 L Street NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Subjects or potential subjects of investigative activities; witnesses involved in investigative activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Reports of investigations, which may include, but are not limited to, witness statements, affidavits, transcripts, police reports, photographs, documentation concerning requests and approval for consensual telephone and consensual non-telephone monitoring, the subject's prior criminal record, vehicle maintenance records, medical records, accident reports, insurance policies, police reports, and other exhibits and documents collected during an investigation; (2) status and disposition information concerning a complaint or investigation including prosecutive action and/or administrative action; (3) complaints or requests to investigate; (4) subpoenas and evidence obtained in response to a subpoena; (5) evidence logs; (6) pen registers; (7) correspondence; (8) records of seized money and/or property; (9) reports of laboratory examination, photographs, and evidentiary reports; (10) digital image files of physical evidence; (11) Documents generated for purposes of SIGTARP's undercover activities; (12) documents pertaining to the identity of confidential informants; and, (13) other documents collected and/or generated by the Office of Investigations during the course of official duties.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 5231, 5 U.S.C. App. 3, and 5 U.S.C. 301.

PURPOSE(S):

The purpose of this system of records is to maintain information relevant to complaints received by SIGTARP and collected as part of investigations conducted by SIGTARP's Office of Investigations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose pertinent information to appropriate Federal, foreign, State, local, Tribal or other public authorities or self-regulatory organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a potential violation of civil or criminal law or regulation;

(2) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(3) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(4) Disclose information to another federal agency to (a) permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency, or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment or correction of records;

(5) Disclose information to the Department of Justice when seeking legal advice, or when (a) the agency or (b) any component thereof, or (c) any employee of the agency in his or her official capacity, or (d) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (e) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation;

(6) Disclose information to the appropriate foreign, State, local, Tribal, or other public authority or self-regulatory organization for the purpose of (a) consulting as to the propriety of access to or amendment or correction of information obtained from that authority or organization, or (b) verifying the identity of an individual who has requested access to or amendment or correction of records;

(7) Disclose information to contractors and other agents who have been engaged by the Department or one of its bureaus to provide products or services associated with the Department's or bureau's responsibility arising under the FOIA/PA;

(8) Disclose information to the National Archives and Records Administration for use in records management inspections;

(9) Disclose information to appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department 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 the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(10) Disclose information to any source, either private or governmental, to the extent necessary to elicit information relevant to a SIGTARP audit or investigation;

(11) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing personnel actions or conducting administrative hearings or appeals, or if needed in the performance of other authorized duties;

(12) In situations involving an imminent danger of death or physical injury, disclose relevant information to an individual or individuals who are in danger; and

(13) Disclose information to persons engaged in conducting and reviewing internal and external peer reviews of the Office of Inspector General to ensure adequate internal safeguards and management procedures exist within any office that had received law enforcement authorization or to ensure auditing standards applicable to Government audits by the Comptroller General of the United States are applied and followed.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPENSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. Electronic records are stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

Records may be retrieved by name, Social Security Number, and/or case number.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable Treasury automated systems security and access policies. Strict controls are imposed to minimize the risk of compromising the information that is stored. The records are accessible to SIGTARP personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons.

RETENTION AND DISPOSAL:

These records are currently not eligible for disposal. SIGTARP is in the process of requesting approval from the National Archives and Records Administration of records disposition schedules concerning all records in this system of records.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Counsel, Office of the Special Inspector General for the Troubled Asset Relief Program (SIGTARP), 1801 L Street NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. This system of records may contain records that are exempt from the notification, access, and contesting records requirements pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

RECORD ACCESS PROCEDURES:

Address inquiries to: Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' above.

RECORD SOURCE CATEGORIES:

Some records contained within this system of records are exempt from the

requirement that the record source categories be disclosed pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Some records contained within this system of records are exempt from 5 U.S.C. 552a (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2).

TREASURY/DO .224

SYSTEM NAME:

SIGTARP Audit Files Database.

SYSTEM LOCATION:

Office of the Special Inspector General for the Troubled Asset Relief Program (SIGTARP), 1801 L Street NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

- Auditors,
- certain administrative support staff,
- contractors of SIGTARP, and
- certain subjects and/or witnesses referenced in SIGTARP's audit activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) audit reports; and

(2) working papers, which may include copies of correspondence, evidence, subpoenas, other documents collected and/or generated by the Office of Audit during the course of official duties.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 5231, 5 U.S.C. App. 3, and 5 U.S.C. 301.

PURPOSES:

This system is maintained in order to act as a management information system for SIGTARP audit projects and personnel and to assist in the accurate and timely conduct of audits.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose pertinent information to appropriate Federal, foreign, State, local, Tribal or other public authorities or self-regulatory organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a potential violation of civil or criminal law or regulation;

(2) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(3) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(4) Disclose information to another federal agency to (a) permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency, or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment or correction of records;

(5) Disclose information to the Department of Justice when seeking legal advice, or when (a) the agency or (b) any component thereof, or (c) any employee of the agency in his or her official capacity, or (d) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (e) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation;

(6) Disclose information to the appropriate foreign, State, local, Tribal, or other public authority or self-regulatory organization for the purpose of (a) consulting as to the propriety of access to or amendment or correction of information obtained from that authority or organization, or (b) verifying the identity of an individual who has requested access to or amendment or correction of records;

(7) Disclose information to contractors and other agents who have been engaged by the Department or one of its bureaus to provide products or services associated with the Department's or bureau's responsibility arising under the FOIA/PA;

(8) Disclose information to the National Archives and Records Administration for use in records management inspections;

(9) Disclose information to appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department 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 the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(10) Disclose information to any source, either private or governmental, to the extent necessary to elicit information relevant to a SIGTARP audit or investigation;

(11) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing personnel actions or conducting administrative hearings or appeals, or if needed in the performance of other authorized duties;

(12) In situations involving an imminent danger of death or physical injury, disclose relevant information to an individual or individuals who are in danger; and

(13) Disclose information to persons engaged in conducting and reviewing internal and external peer reviews of the Office of Inspector General to ensure adequate internal safeguards and management procedures exist within any office that had received law enforcement authorization or to ensure auditing standards applicable to Government audits by the Comptroller General of the United States are applied and followed.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPENSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. Electronic records are stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

Records may be retrieved by name of the auditor, support staff, contractors, or subject of the audit.

SAFEGUARDS:

The records are accessible to SIGTARP personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through

the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RETENTION AND DISPOSAL:

These records are currently not eligible for disposal. SIGTARP is in the process of requesting approval from the National Archives and Records Administration of records disposition schedules concerning all records in this system of records.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Counsel, Office of the Special Inspector General for the Troubled Asset Relief Program (SIGTARP), 1801 L Street NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. This system of records may contain records that are exempt from the notification, access, and contesting records requirements pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

RECORD ACCESS PROCEDURES:

Address inquiries to: Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' above.

RECORD SOURCE CATEGORIES:

Some records contained within this system of records are exempt from the requirement that the record source categories be disclosed pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Some records contained within this system of records are exempt from 5 U.S.C. 552a (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). See 31 CFR 1.36.

TREASURY/DO .225

SYSTEM NAME:

TARP Fraud Investigation Information System.

SYSTEM LOCATION:

Office of Financial Stability, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The TARP Fraud Investigation Information System contains information about:

(a) Individuals that seek, receive or are entrusted with TARP funds;

(b) Individuals that are:

1. Known perpetrators or suspected perpetrators of a known or possible fraud committed or attempted against TARP programs;

2. Directors, officers, partners, proprietors, employees, and agents, of a business entity;

3. Named as possible witnesses;

4. Actual or potential victims of fraud, including but not limited to mortgage fraud; and

5. Individuals or entities who have applied to any of the TARP programs, recipients of TARP program funds and/or benefits, OFS contractors, OFS agents; or

6. Individuals or entities who have or might have information about reported matters.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains information on individuals or entities who seek, receive or are entrusted with TARP funds, are the subject of an investigation or in connection with an investigation, undertaken by OFS into allegations of actual or suspected TARP program fraud, waste, and/or abuse. Typically, these records include, but are not limited to, the individual's name, date of birth, Social Security Number, telephone number(s), residential address(es), email or web address(es), driver's license number, vehicle ownership records, prior criminal history, and other exhibits and documents collected during an investigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 5211 and 18 U.S.C. 1031.

PURPOSE(S):

The purpose of this system of records is to maintain a database of investigative materials consisting of complaints, inquiries, and investigative referrals pertaining to alleged fraud, waste, and/or abuse committed or alleged to have been committed by third parties against the TARP programs, and of background inquiries conducted on individuals seeking, receiving or entrusted with TARP funds. Information in the system will allow investigators to determine whether to refer matters to the appropriate authority for further investigation and possible criminal, civil, or administrative action.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used:

1. To disclose pertinent information to appropriate Federal, foreign, State, local, Tribal or other public authorities or self-regulatory organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a potential violation of civil or criminal law or regulation.

2. Provide information to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

3. Disclose information to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a federal agency, when the Federal Government is a party to the judicial or administrative proceeding. In those cases where the Federal Government is not a party to the proceeding, records may be disclosed if a subpoena has been signed by a court of competent jurisdiction and agency ''Touhy'' regulations are followed. See 31 CFR 1.8 *et seq.*

4. To disclose information to the National Archives and Records Administration (NARA) for use in its records management inspections and its role as an Archivist.

5. To disclose information to the United States Department of Justice (DOJ), for the purpose of representing or providing legal advice to the Department of the Treasury (Department) in a proceeding before a court, adjudicative body, or other administrative body before which the Department is authorized to appear, when such proceeding involves:

(a) The Department or any component thereof;

(b) Any employee of the Department in his or her official capacity;

(c) Any employee of the Department in his or her individual capacity where the DOJ or the Department has agreed to represent the employee; or

(d) The United States, when the Department determines that litigation is likely to affect the Department or any of its components; and the use of such records by the DOJ is deemed by the DOJ or the Department to be relevant and necessary to the litigation provided that the disclosure is compatible with

the purpose for which records were collected.

6. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Department, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to Department officers and employees.

7. To appropriate agencies, entities, and persons when: (a) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise that there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department 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 the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

8. To disclose information to the appropriate Federal, foreign, State, local, Tribal, or other public authority or self-regulatory organization for the purpose of consulting as to the propriety of access to or amendment or correction of information obtained from that authority or organization, or verifying the identity of an individual who has requested access to or amendment or correction of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in both an electronic media and paper records.

RETRIEVABILITY:

These records may be retrieved by various combinations of employer name and or individual name.

SAFEGUARDS:

Where feasible, data in electronic format is encrypted or password protected. Access to data and records is limited to only those employees within the Office of Financial Stability whose duties require access. Physical records are kept securely locked at a controlled, limited-access facility. Personnel screening and training are employed to prevent unauthorized disclosure.

RETENTION AND DISPOSAL:

The records will be maintained indefinitely until a record disposition schedule submitted to the National Archives Records Administration has been approved.

SYSTEM MANAGER(S) AND ADDRESS:

Supervisory Fraud Specialist, Office of Financial Stability, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Address inquiries to: Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220. This system of records may contain records that are exempt from the notification, access, and contesting records requirements pursuant to the provisions of 5 U.S.C. 552a(k)(2).

RECORD ACCESS PROCEDURE:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURE:

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

Information contained in this system is obtained from mortgage servicers, other government agencies or self-regulatory organizations, Treasury's financial agents, commercial databases, and/or witnesses or other third parties having information relevant to an investigation. Some records contained within this system of records are exempt from the requirement that the record source categories be disclosed pursuant to the provisions of 5 U.S.C. 552a(k)(2).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Some records contained within this system of records are exempt from 5 U.S.C. 552a(c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (e)(4)(H), (I) and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2).

TREASURY/DO .226

SYSTEM NAME:

Validating EITC Eligibility with State Data Pilot Project Records –Treasury/DO.

SYSTEM LOCATION:

Office of the Fiscal Assistant Secretary, Department of the Treasury, 1500 Pennsylvania Ave. NW., Washington, DC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who file for State-administered public assistance benefits in States participating in the Department's pilot program.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records include information pertaining to the Department of the Treasury's pilot project ''Assessing State Data for Validating EITC Eligibility.'' Records include, but are not limited to, the application[s] for State-administered benefits, including subsequent recertification documentation and other documents supporting eligibility for State-administered benefit programs. The records may contain taxpayer names, Taxpayer Identification Numbers, Social Security Numbers, and other representative authorization information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Consolidated Appropriations Act, 2010 (Pub. L. 111–117, 123 Stat. 3034, 3171–3172); 5 U.S.C. 301; 31 U.S.C. 321.

PURPOSE:

The purpose of this system is to determine whether data maintained by up to five States in their public assistance and other databases can assist in identifying both ineligible individuals who receive improper Earned Income Tax Credit payments and eligible individuals who are not claiming the EITC.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. All other records may be used as described below if the Department determines that the purpose of the disclosure is compatible with the purpose for which the Department collected the records, and no privilege is asserted.

(1) Disclose to the appropriate State agencies responsible for validating results of the data matching initiative with specific individual case file research.

(2) Provide information to a Congressional Office in response to an inquiry made at the request of the individual to whom the records pertain.

(3) Disclose information to a contractor, including a consultant hired by Treasury, to the extent necessary for the performance of a contract.

(4) To appropriate agencies, entities, and persons when: (a) The Department

suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department 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 the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

(5) Disclose information to the National Archives and Records Administration (''NARA'') for use in its records management inspections and its role as an Archivist.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. Electronic records are stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

By taxpayer name and Taxpayer Identification Number, Social Security Number, employer identification number, or similar number assigned by the IRS.

SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords. Other records are maintained in locked file cabinets or rooms with access limited to those personnel whose official duties require access. The facilities have 24-hour on-site security.

RETENTION AND DISPOSAL:

Electronic and paper records will be maintained indefinitely until a records disposition schedule is approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Assistant Secretary for Fiscal Operations and Policy, Office of the Fiscal Assistant Secretary, Department of the Treasury, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Inquiries should be addressed as in ''Record Access Procedures'' below.

RECORDS ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Inquiries should be addressed to Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

CONTESTING RECORDS PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records. For all other records, see ''Records Access Procedures'' above.

RECORDS SOURCE CATEGORIES:

Records in this system are provided by the States' department for public assistance and health services, and/or the departments of revenue for the States participating in the pilot project.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .301

SYSTEM NAME:

TIGTA General Personnel and Payroll.

SYSTEM LOCATION:

National Headquarters, 1401 H Street NW., Washington, DC 20005, field offices listed in Appendices A and B, Bureau of Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, and Transaction Processing Center, U.S. Department of Agriculture, National Finance Center.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former TIGTA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of a variety of records relating to personnel actions and determinations made about TIGTA employees. These records contain data on individuals required by the Office of Personnel Management (OPM) and which may also be contained in the Official Personnel Folder (OPF). This system may also contain letters of commendation, recommendations for awards, awards, reprimands, adverse or disciplinary charges, and other records which OPM and TIGTA require or permit to be maintained. This system may include records that are maintained in support of a personnel action such as a position management or position classification action, a reduction-in-force action, and priority placement actions. Other records maintained about an individual in this system are performance appraisals and related records, expectation and payout records, employee performance file records, suggestion files, award files, financial and tax records, back pay files, jury duty records, outside employment statements, clearance upon separation documents, unemployment compensation records, adverse and disciplinary action files, supervisory drop files, records relating to personnel actions, furlough and recall records, work measurement records, emergency notification records, and employee locator and current address records. This system includes records created and maintained for purposes of administering the payroll system. Time-reporting records include timesheets and records indicating the number of hours by TIGTA employee attributable to a particular project, task, or audit. This system also includes records related to travel expenses and/or costs. This system includes records concerning employee participation in the Telecommuting program. This system also contains records relating to life and health insurance, retirement coverage, designations of beneficiaries, and claims for survivor or death benefits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. app. 3, and 5 U.S.C. 301, 1302, 2951, 4506, Ch. 83, 87, and 89.

PURPOSE(S):

This system consists of records compiled for personnel, payroll and time-reporting purposes. In addition, this system contains all records created and/or maintained about employees as required by the Office of Personnel Management (OPM) as well as documents relating to personnel matters and determinations. Retirement, life, and health insurance benefit records are collected and maintained in order to administer the Federal Employee's Retirement System (FERS), Civil Service Retirement System (CSRS), Federal Employee's Group Life Insurance Plan, and, the Federal Employees' Health Benefit Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures of returns and return information may be made only as

provided by 26 U.S.C. 6103. Records other than returns and return information may be used to:

(1) Disclose pertinent information to federal, state, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law, or regulation;

(2) Disclose information to a federal, state, local, or other public authority maintaining civil, criminal, or other relevant enforcement information or other pertinent information that has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear when: (a) The agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party of the litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(4) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witness in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a court order where arguably relevant to a proceeding;

(5) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(6) Provide information to third parties in order to obtain information pertinent and necessary for the hiring or retention of an individual and/or to obtain information pertinent to an investigation;

(7) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(8) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2;

(9) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or appeals, or if needed in the performance of authorized duties;

(10) Provide information to educational institutions for recruitment and cooperative education purposes;

(11) Provide information to a federal, state, or local agency so that the agency may adjudicate an individual's eligibility for a benefit;

(12) Provide information to a federal, state, or local agency or to a financial institution as required by law for payroll purposes;

(13) Provide information to federal agencies to effect inter-agency salary offset and administrative offset;

(14) Provide information to a debt collection agency for debt collection services;

(15) Respond to state and local authorities for support garnishment interrogatories;

(16) Provide information to private creditors for the purpose of garnishment of wages of an employee if a debt has been reduced to a judgment;

(17) Provide information to a prospective employer of a current or former TIGTA employee;

(18) In situations involving an imminent danger of death or physical injury, disclose relevant information to an individual or individuals who are in danger;

(19) Provide information to the Office of Workers' Compensation, Veterans Administration Pension Benefits Program, Social Security (Old Age, Survivor and Disability Insurance) and Medicare Programs, Federal civilian employee retirement systems, and other Federal agencies when requested by that program, for use in determining an individual's claim for benefits;

(20) Provide information necessary to support a claim for health insurance benefits under the Federal Employees' Health Benefits Program to a health insurance carrier or plan participating in the program;

(21) Provide information to hospitals and similar institutions to verify an employee's coverage in the Federal Employees' Health Benefits Program;

(22) Provide information to other Offices of Inspectors General, the President's Council on Integrity and Efficiency, and the Department of Justice, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to Section 6(e) of the Inspector General Act of 1978, as amended, 5 U.S.C.A. Appendix 3, and

(23) To appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department 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 the Department'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 of debt information concerning a claim against an individual 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 Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPENSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic media, paper records, and microfiche.

RETRIEVABILITY:

Name, Social Security Number, and/or claim number.

SAFEGUARDS:

The records are accessible to TIGTA personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with the appropriate National Archives and Records Administration General Records Schedule, Nos. 1 and 2.

SYSTEM MANAGER(S) AND ADDRESS:

General Personnel Records—Associate Inspector General for Mission Support/Chief Financial Officer. Time-reporting records: (1) For Office of Audit employees—Deputy Inspector General for Audit; (2) For Office of Chief Counsel employees—Chief Counsel; (3) For Office of Investigations employees—Deputy Inspector General for Investigations; (4) For Office of Inspections and Evaluations employees—Deputy Inspector General for Inspections and Evaluations; (5) For Office of Information Technology employees—Chief Information Officer; and (6) For Office of Mission Support/Chief Financial Officer employees—Associate Inspector General for Mission Support/Chief Financial Officer—1401 H Street NW., Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Written inquiries should be addressed to the Office of Chief Counsel, Disclosure Branch, Treasury Inspector General for Tax Administration, 1401 H Street NW., Room 469, Washington, DC 20005.

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' above.

RECORD SOURCE CATEGORIES:

Information in this system of records either comes from the individual to whom it applies, is derived from information supplied by that individual, or is provided by Department of the Treasury and other federal agency personnel and records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .302

SYSTEM NAME:

TIGTA Medical Records.

SYSTEM LOCATION:

(1) Health Improvement Plan Records—Office of Investigations, 1401 H Street NW., Washington, DC 20005 and field division offices listed in Appendix A; and, (2) All other records of: (a) Applicants and current TIGTA employees: Office of Mission Support/Chief Financial Officer, TIGTA, 1401 H Street NW., Washington, DC 20005 and/or Bureau of Public Debt, 200 Third Street, Parkersburg, WV 26106–1328; and, (b) former TIGTA employees: National Personnel Records Center, 9700 Page Boulevard, St. Louis, MO 63132.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Applicants for TIGTA employment; (2) Current and former TIGTA employees; (3) Applicants for disability retirement; and, (4) Visitors to TIGTA offices who require medical attention while on the premises.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Documents relating to an applicant's mental/physical ability to perform the duties of a position; (2) Information relating to an applicant's rejection for a position because of medical reasons; (3) Documents relating to a current or former TIGTA employee's mental/physical ability to perform the duties of the employee's position; (4) Disability retirement records; (5) Health history questionnaires, medical records, and other similar information for employees participating in the Health Improvement Program; (6) Fitness-for-duty examination reports; (7) Employee assistance records; (8) Injury compensation records relating to on-the-job injuries of current or former TIGTA employees; and, (9) Records relating to the drug testing program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. app. 3, 5 U.S.C. 301, 3301, 7301, 7901, and Ch. 81, 87 and 89.

PURPOSE(S):

To maintain records related to employee physical exams, fitness-for-duty evaluations, drug testing, disability retirement claims, participation in the Health Improvement Program, and worker's compensation claims. In addition, these records may be used for purposes of making suitability and fitness-for duty determinations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

With the exception of Routine Use ''(1),'' none of the other Routine Uses identified for this system of records are applicable to records relating to drug testing under Executive Order 12564 ''Drug-Free Federal Work Place.'' Further, such records shall be disclosed only to a very limited number of officials within the agency, generally only to the agency Medical Review Official (MRO), the administrator of the agency Employee Assistance Program, and the management official empowered to recommend or take adverse action affecting the individual.

Records may be used to:

(1) Disclose the results of a drug test of a Federal employee pursuant to an order of a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action;

(2) Disclose pertinent information to appropriate federal, state, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law, or regulation;

(3) Disclose information to a federal, state, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(4) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear when (a) the agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(5) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witness in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a court order where arguably relevant to a proceeding;

(6) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(7) Provide information to third parties in order to obtain information pertinent and necessary for the hiring or retention of an individual and/or to

obtain information pertinent to an investigation;

(8) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(9) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or appeals, or if needed in the performance of authorized duties;

(10) Provide information to Federal or State agencies responsible for administering Federal benefits programs and private contractors engaged in providing benefits under Federal contracts;

(11) Disclose information to an individual's private physician where medical considerations or the content of medical records indicate that such release is appropriate;

(12) Disclose information to other Federal or State agencies to the extent provided by law or regulation;

(13) In situations involving an imminent danger of death or physical injury, disclose relevant information to an individual or individuals who are in danger;

(14) Provide information to other Offices of Inspectors General, the President's Council on Integrity and Efficiency, and the Department of Justice, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to Section 6(e) of the Inspector General Act of 1978, as amended, 5 U.S.C.A. Appendix 3, and

(15) To appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department 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 the Department'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 DISPENSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, electronic media, and x-rays.

RETRIEVABILITY:

Records are retrievable by name, Social Security Number, date of birth and/or claim number.

SAFEGUARDS:

The records are accessible to TIGTA personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with the appropriate National Archives and Records Administration General Records Schedule, No. 1.

SYSTEM MANAGER(S) AND ADDRESS:

(1) Health Improvement Program records—Deputy Inspector General for Investigations, TIGTA, 1401 H Street NW., Washington, DC 20005; and, (2) All other records—Associate Inspector General for Mission Support/Chief Financial Officer, 1401 H Street NW., Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart c, appendix A. Written inquiries should be addressed to the Office of Chief Counsel, Disclosure Section, Treasury Inspector General for Tax Administration, 1401 H Street NW., Room 469, Washington, DC 20005.

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' above.

RECORD SOURCE CATEGORIES:

(1) The subject of the record; (2) Medical personnel and institutions; (3) Office of Workers' Compensation personnel and records; (4) Military Retired Pay Systems Records; (5) Federal civilian retirement systems; (6) General Accounting Office pay, leave allowance cards; (7) OPM Retirement, Life Insurance and Health Benefits Records System and Personnel Management Records System; (8) Department of Labor; and, (9) Federal Occupation Health Agency.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .303

SYSTEM NAME:

TIGTA General Correspondence.

SYSTEM LOCATION:

National Headquarters, 1401 H Street NW., Washington, DC 20005, and field offices listed in Appendices A and B.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Initiators of correspondence; and, (2) Persons upon whose behalf the correspondence was initiated.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Correspondence received by TIGTA and responses generated thereto; and, (2) Records used to respond to incoming correspondence. Special Categories of correspondence may be included in other systems of records described by specific notices.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. app. 3 and 5 U.S.C. 301.

PURPOSE(S):

This system consists of correspondence received by TIGTA from individuals and their representatives, oversight committees, and others who conduct business with TIGTA and the responses thereto; it serves as a record of in-coming correspondence and the steps taken to respond thereto.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to:

(1) Disclose pertinent information to appropriate federal, state, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law, or regulation;

(2) Disclose information to a federal, state, local, or other public authority maintaining civil, criminal or other

relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which TIGTA is authorized to appear when (a) the agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(4) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in connection with criminal law proceedings or in response to a subpoena where arguably relevant to a proceeding;

(5) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(6) Provide information to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(7) Provide information to the news media, in accordance with guidelines contained in 28 CFR 50.2;

(8) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(9) Provide information to other Offices of Inspectors General, the President's Council on Integrity and Efficiency, and the Department of Justice, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to Section 6(e) of the Inspector General Act of 1978, as amended, 5 U.S.C.A. Appendix 3, and

(10) To appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department 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 the Department'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 DISPENSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic media.

RETRIEVABILITY:

By name of the correspondent and/or name of the individual to whom the record applies.

SAFEGUARDS:

The records are accessible to TIGTA personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RETENTION AND DISPOSAL:

Paper records are maintained and disposed of in accordance with a record disposition schedule approved by the National Archives Records Administration. TIGTA is in the process of requesting approval for a record retention schedule for electronic records maintained in this system. These electronic records will not be destroyed until TIGTA receives such approval.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Inspector General for Mission Support/Chief Financial Officer, TIGTA, 1401 H Street NW., Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Written inquiries should be addressed to the Office of Chief Counsel, Disclosure Branch, Treasury Inspector General for Tax Administration, 1401 H Street NW., Room 469, Washington, DC 20005. This system of records may contain records that are exempt from the notification, access, and contesting records requirements pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' above.

RECORD SOURCE CATEGORIES:

Some records contained within this system of records are exempt from the requirement that the record source categories be disclosed pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2). Non-exempt sources of information include: (1) Initiators of the correspondence; and (2) Federal Treasury personnel and records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Some records contained within this system of records are exempt from 5 U.S.C. 552a (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). See 31 CFR 1.36.

TREASURY/DO .304

SYSTEM NAME:

TIGTA General Training Records.

SYSTEM LOCATION:

National Headquarters, 1401 H Street NW., Washington, DC 20005; Federal Law Enforcement Training Center (FLETC), Glynco, GA 31524.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) TIGTA employees; and, (2) Other Federal or non-Government individuals who have participated in or assisted with training programs as instructors, course developers, or interpreters.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Course rosters; (2) Student registration forms; (3) Nomination forms; (4) Course evaluations; (5) Instructor lists; (6) Individual Development Plans (IDPs); (7) Counseling records; (8) Examination and testing materials; (9) Payment records; (10) Continuing professional education requirements; (11) Officer safety files and firearm qualification records; and, (12) Other training records necessary for reporting and evaluative purposes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. app. 3, 5 U.S.C. 301 and Ch. 41, and Executive Order 11348, as amended by Executive Order 12107.

PURPOSE(S):

These records are collected and maintained to document training received by TIGTA employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records may be used to:

(1) Disclose pertinent information to appropriate federal, state, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law, or regulation;

(2) Disclose information to a federal, state, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which TIGTA is authorized to appear when (a) the agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(4) Disclose information to a court, magistrate or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witness in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a court order where arguably relevant to a proceeding;

(5) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(6) Provide information to third parties to the extent necessary to obtain information pertinent to the training request or requirements and/or in the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(7) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(8) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2;

(9) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or appeals, or if needed in the performance of authorized duties;

(10) Provide information to other Offices of Inspectors General, the President's Council on Integrity and Efficiency, and the Department of Justice, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to Section 6(e) of the Inspector General Act of 1978, as amended, 5 U.S.C.A. Appendix 3, and

(11) To appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department 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 the Department'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 DISPENSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic media.

RETRIEVABILITY:

Name, Social Security Number, course title, date of training, and/or location of training.

SAFEGUARDS:

The records are accessible to TIGTA personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RETENTION AND DISPOSAL:

Records are maintained and disposed in accordance with the appropriate National Archives and Records Administration General Records Schedule, No. 1.

SYSTEM MANAGER(S) AND ADDRESS:

(1) For records concerning Office of Investigations employees—Deputy Inspector General for Investigations; (2) For records concerning Office of Audit employees—Deputy Inspector General for Audit; (3) For Office of Chief Counsel employees—Chief Counsel; and, (4) For Office of Inspections and Evaluations—Deputy Inspector General for Inspections and Evaluations; (5) For Office of Information Technology employees—Chief Information Officer; and, (6) For Office of Mission Support/Chief Financial Officer employees—Associate Inspector General for Mission Support/Chief Financial Officer—1401 H Street NW., Washington, DC, 20005.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Written inquiries should be addressed to the Office of Chief Counsel, Disclosure Branch, Treasury Inspector General for Tax Administration, 1401 H Street NW., Room 469, Washington, DC 20005.

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' above.

RECORD SOURCE CATEGORIES:

(1) The subject of the record; and, (2) Treasury personnel and records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .305

SYSTEM NAME:

TIGTA Personal Property Management Records.

SYSTEM LOCATION:

TIGTA, 4800 Buford Hwy, Chamblee, GA 30341.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former TIGTA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information concerning personal property assigned to TIGTA employees including descriptions and identifying information about the property, maintenance records, and other similar records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. app. 3, 5 U.S.C. 301, and 41 CFR Subtitle C Ch. 101 and 102.

PURPOSE(S):

The purpose of this system is to maintain records concerning personal property, including but not limited to, laptop and desktop computers and other Information Technology and related accessories, fixed assets,, motor vehicles, firearms and other law enforcement equipment, and communications equipment, for use in official duties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records may be used to:

(1) Disclose pertinent information to appropriate federal, state, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law, or regulation;

(2) Disclose information to a federal, state, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information that has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which TIGTA is authorized to appear when: (a) The agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of theagency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(4) Disclose information to a court, magistrate or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witness in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a court order where arguably relevant to a proceeding;

(5) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(6) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(7) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(8) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2;

(9) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or appeals, or if needed in the performance of authorized duties;

(10) Provide information to other Offices of Inspectors General, the President's Council on Integrity and Efficiency, and the Department of Justice, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to Section 6(e) of the Inspector General Act of 1978, as amended, 5 U.S.C.A. Appendix 3, and

(11) To appropriate agencies, entities, and persons when: (a) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department 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 the Department'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:

Electronic media.

RETRIEVABILITY:

Indexed by name and/or identification number.

SAFEGUARDS:

The records are accessible to TIGTA personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Archived paper records are maintained in locked facilities and/or cabinets with restricted access.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with the appropriate National Archives and Records Administration General Records Schedules, Nos. 4 and 10.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Inspector General for Mission Support/Chief Financial Officer, Office of Mission Support/Chief Financial Officer, 1401 H Street NW., Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Written inquiries should be addressed to the Office of Chief Counsel, Disclosure Branch, Treasury Inspector General for Tax Administration, 1401 H Street NW., Room 469, Washington, DC 20005.

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' above.

RECORD SOURCE CATEGORIES:

(1) The subject of the record; (2) Treasury personnel and records; (3) Vehicle maintenance facilities; (4) Property manufacturer; and, (5) Vehicle registration and licensing agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .306

SYSTEM NAME:

TIGTA Recruiting and Placement Records.

SYSTEM LOCATION:

Office of Mission Support/Chief Financial Officer, NW1401 H Street NW., Washington, DC 20005 and/or Bureau of Public Debt, 200 Third Street, Parkersburg, WV 26106–1328.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Applicants for employment; and, (2) Current and former TIGTA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Application packages and Resumes; (2) Related correspondence; and, (3) Documents generated as part of the recruitment and hiring process.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. app. 3, 5 U.S.C. 301 and Ch. 33, and Executive Orders 10577 and 11103.

PURPOSE(S):

The purpose of this system is to maintain records received from applicants applying for positions with TIGTA and relating to determining eligibility for employment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to:

(1) Disclose pertinent information to appropriate federal, state, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law, or regulation;

(2) Disclose information to a federal, state, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which TIGTA is authorized to appear when: (a) The agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(4) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witness in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a court order where arguably relevant to a proceeding;

(5) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(6) Provide information to third parties to the extent necessary to obtain information pertinent to the recruitment, hiring, and/or placement determination and/or during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(7) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(8) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2;

(9) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or appeals, or if needed in the performance of authorized duties;

(10) Disclose information to officials of Federal agencies for purposes of consideration for placement, transfer, reassignment, and/or promotion of TIGTA employees;

(11) Provide information to other Offices of Inspectors General, the President's Council on Integrity and Efficiency, and the Department of Justice, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to section 6(e) of the Inspector General Act of 1978, as amended, 5 U.S.C.A. Appendix 3, and

(12) To appropriate agencies, entities, and persons when: (a) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department 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 the Department'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:

Paper and electronic media.

RETRIEVABILITY:

Records are indexed by name, Social Security Number, and/or vacancy announcement number.

SAFEGUARDS:

The records are accessible to TIGTA personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access disposal.

RETENTION AND DISPOSAL:

Records in this system are maintained and disposed of in accordance with the appropriate National Archives and Records Administration General Records Schedule, No. 1.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Inspector General for Mission Support/Chief Financial Officer, NW1401 H Street NW., Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix

A. Written inquiries should be addressed to the Office of Chief Counsel, Disclosure Branch, Treasury Inspector General for Tax Administration, 1401 H Street NW., Room 469, Washington, DC 20005. This system of records may contain records that are exempt from the notification, access, and contesting records requirements pursuant to the provisions of 5 U.S.C. 552a(k)(5) and (k)(6).

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' above.

RECORD SOURCE CATEGORIES:

(1) The subject of the record; (2) Office of Personnel Management; and, (3) Treasury personnel and records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Some records in this system have been designated as exempt from 5 U.S.C. 552a (c)(3), (d)(1), (2), (3), and (4), (e)(1), (e)(4)(G), (H), and (I), and (f) pursuant to 5 U.S.C. 552a (k)(5) and (k)(6). See 31 CFR 1.36.

TREASURY/DO .307

SYSTEM NAME:

TIGTA Employee Relations Matters, Appeals, Grievances, and Complaint Files.

SYSTEM LOCATION:

Office of Mission Support/Chief Financial Officer, TIGTA, 1401 H Street NW., Washington, DC 20005.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current, former, and prospective TIGTA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Requests, (2) Appeals, (3) Complaints, (4) Letters or notices to the subject of the record, (5) Records of hearings, (6) Materials relied upon in making any decision or determination, (7) Affidavits or statements, (8) Investigative reports, and, (9) Documents effectuating any decisions or determinations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. app 3 and 5 U.S.C. 301, Ch. 13, 31, 33, 73, and 75.

PURPOSE(S):

This system consists of records compiled for administrative purposes concerning personnel matters affecting current, former, and/or prospective TIGTA employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to:

(1) Disclose pertinent information to appropriate federal, state, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law, or regulation;

(2) Disclose information to a federal, state, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which TIGTA is authorized to appear when (a) the agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(4) Disclose information to a court, magistrate or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a court order where arguably relevant to a proceeding;

(5) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(6) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(7) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(8) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2;

(9) Provide information to Executive agencies, including, but not limited to the Office of Personnel Management, Office of Government Ethics, and General Accounting Office in order to obtain legal and/or policy guidance;

(10) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or appeals, or if needed in the performance of authorized duties;

(11) Provide information to other Offices of Inspectors General, the President's Council on Integrity and Efficiency, and the Department of Justice, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to Section 6(e) of the Inspector General Act of 1978, as amended, 5 U.S.C.A. Appendix 3, and

(12) To appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department 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 the Department'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:

Paper and electronic media.

RETRIEVABILITY:

Indexed by the name of the individual and case number.

SAFEGUARDS:

The records are accessible to TIGTA personnel, all of whom have been the subjects of a background investigation, on a need-to-know basis. Disclosure of

information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with the appropriate National Archives and Records Administration General Records Schedule, No. 1.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Inspector General for Mission Support/Chief Financial Officer, 1401 H Street NW., Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Written inquiries should be addressed to the Office of Chief Counsel, Disclosure Branch, Treasury Inspector General for Tax Administration, 1401 H Street NW., Room 469, Washington, DC 20005. This system of records may contain records that are exempt from the notification, access, and contesting records requirements pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' above.

RECORD SOURCE CATEGORIES:

(1) The subject of the records; (2) Treasury personnel and records; (3) Witnesses; (4) Documents relating to the appeal, grievance, or complaint; and, (5) EEOC, MSPB, and other similar organizations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system may contain investigative records that are exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). (See 31 CFR 1.36.)

TREASURY/DO .308

SYSTEM NAME:

TIGTA Data Extracts.

SYSTEM LOCATION:

National Headquarters, 1401 H Street NW., Washington, DC 20005, Office of Mission Support/Chief Financial Officer, 4800 Buford Highway, Chamblee, GA 30341, and Office of Investigations, Strategic Enforcement Division, 550 Main Street, Cincinnati, OH 45202.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) The subjects or potential subjects of investigations; (2) Individuals who have filed, are required to file tax returns, or are included on tax returns, forms, or other information filings; (3) Entities who have filed or are required to file tax returns, IRS forms, or information filings as well as any individuals listed on the returns, forms and filings; and, (4) Taxpayer representatives.

CATEGORIES OF RECORDS IN THE SYSTEM:

Data extracts from various databases maintained by the Internal Revenue Service consisting of records collected in performance of its tax administration responsibilities as well as records maintained by other governmental agencies, entities, and public record sources. This system also contains information obtained via TIGTA's program of computer matches.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. app. 3 and 5 U.S.C. 301.

PURPOSE(S):

This system consists of data extracts from various electronic systems of records maintained by governmental agencies and other entities. The data extracts generated by TIGTA are used for audit and investigative purposes and are necessary to identify and deter fraud, waste, and abuse in the programs and operations of the Internal Revenue Service (IRS) and related entities as well as to promote economy, efficiency, and integrity in the administration of the internal revenue laws and detect and deter wrongdoing by IRS and TIGTA employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to:

(1) Disclose pertinent information to appropriate federal, state, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law, or regulation;

(2) Disclose information to a federal, state, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information that has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which TIGTA is authorized to appear when (a) the agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(4) Disclose information to a court, magistrate or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witness in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a court order where arguably relevant to a proceeding;

(5) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(6) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(7) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(8) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2;

(9) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or appeals, or if needed in the performance of authorized duties;

(10) Provide information to other Offices of Inspectors General, the President's Council on Integrity and Efficiency, and the Department of Justice, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to section 6(e) of the Inspector General Act of 1978, as amended, 5 U.S.C.A. Appendix 3, and

(11) To appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department 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 the Department'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 DISPENSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic media.

RETRIEVABILITY:

By name, Social Security Number, Taxpayer Identification Number, and/or employee identification number.

SAFEGUARDS:

The records are accessible to TIGTA personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RETENTION AND DISPOSAL:

TIGTA is in the process of requesting approval of a new record retention schedule concerning the records in this system of records. These records will not be destroyed until TIGTA receives approval from the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Inspector General for Mission Support/Chief Financial Officer, TIGTA, 1401 H Street NW., Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Written inquiries should be addressed to the Office of Chief Counsel, Disclosure Branch, Treasury Inspector General for Tax Administration, 1401 H Street NW., Washington, DC 20005. This system of records may contain records that are exempt from the notification, access, and contesting records requirements pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' above. 26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Some records contained within this system of records are exempt from the requirement that the record source categories be disclosed pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2). Non-exempt record source categories include the following: Department of the Treasury personnel and records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Some records contained within this system of records are exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). (See 31 CFR 1.36.)

TREASURY/DO .309

SYSTEM NAME:

TIGTA Chief Counsel Case Files.

SYSTEM LOCATION:

Office of Chief Counsel, 1401 H Street NW., Washington, DC 20005.

CATEGORIES OF INDIVIDUALS:

Parties to and persons involved in litigations, actions, personnel matters, administrative claims, administrative appeals, complaints, grievances, advisories, and other matters assigned to, or under the jurisdiction of, the Office of Chief Counsel.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Memoranda, (2) Complaints, (3) Claim forms, (4) Reports of Investigations, (5) Accident reports, (6) Witness statements and affidavits, (7) Pleadings, (8) Correspondence, (9) Administrative files, (10) Case management documents, and (11) Other records collected or generated in response to matters assigned to the Office of Chief Counsel.

PURPOSE(S):

This system contains records created and maintained by the Office of Chief Counsel for purposes of providing legal and programmatic service to TIGTA.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. app. 3, and 5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to:

(1) Disclose pertinent information to appropriate federal, state, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of, or for enforcing, or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law, or regulation;

(2) Disclose information to a federal, state, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information that has requested information relevant to, or necessary to, the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which TIGTA is authorized to appear when (a) the agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(4) Disclose information to a court, magistrate or administrative tribunal in

the course of presenting evidence, including disclosures to opposing counsel or witness in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a court order where arguably relevant to a proceeding;

(5) Disclose information to the Department of Justice for the purposes of litigating an action or seeking legal advice;

(6) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to an investigation or matter under consideration;

(7) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(8) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2;

(9) Provide information to Executive agencies, including, but not limited to the Office of Personnel Management, Office of Government Ethics, and General Accounting Office;

(10) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or appeals, or if needed in the performance of authorized duties;

(11) Provide information to other Offices of Inspectors General, the President's Council on Integrity and Efficiency, and the Department of Justice, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to Section 6(e) of the Inspector General Act of 1978, as amended, 5 U.S.C.A. Appendix 3, and

(12) To appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department 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 the Department'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 of debt information concerning a claim against an individual 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 Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic media.

RETRIEVABILITY:

Records are retrievable by the name of the person to whom they apply and/or by case number.

SAFEGUARDS:

The records are accessible to TIGTA personnel, all of whom have been the subject of a background investigation, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RETENTION AND DISPOSAL:

Paper records are maintained and disposed of in accordance with a record disposition schedule approved by the National Archives and Records Administration. TIGTA is in the process of requesting approval for a record retention schedule for electronic records maintained in this system. These electronic records will not be destroyed until TIGTA receives such approval.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Chief Counsel, TIGTA, 1401 H Street NW., Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Written inquiries should be addressed to the Office of Chief Counsel, Disclosure Branch, Treasury Inspector General for Tax Administration, 1401 H Street NW., Room 469, Washington, DC 20005. This system of records may contain records that are exempt from the notification, access, and contesting records requirements pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' above.

RECORD SOURCE CATEGORIES:

Some records in this system are exempt from the requirement that the record source categories be disclosed pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2). Non-exempt record source categories include the following: (1) Department of the Treasury personnel and records, (2) The subject of the record, (3) Witnesses, (4) Parties to disputed matters of fact or law, (5) Congressional inquiries, and, (6) Other Federal agencies including, but not limited to, the Office of Personnel Management, the Merit Systems Protection Board, and the Equal Employment Opportunities Commission.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Some of the records in this system are exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (d)(5)(e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). (See 31 CFR 1.36.)

TREASURY/DO .310

SYSTEM NAME:

TIGTA Chief Counsel Disclosure Branch Records.

SYSTEM LOCATION:

Office of Chief Counsel, Disclosure Branch, TIGTA, 1401 H Street NW., Washington, DC 20005.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Requestors for access and amendment pursuant to the Privacy Act of 1974, 5 U.S.C. 552a; (2) Subjects of requests for disclosure of records; (3) Requestors for access to records pursuant to 26 U.S.C. 6103; (4) TIGTA employees who have been subpoenaed or requested to produce TIGTA documents or testimony on behalf of TIGTA in judicial or administrative proceedings; (5) Subjects of investigations who have been referred to another law enforcement authority; (6) Subjects of investigations who are parties to a judicial or administrative proceeding in which testimony of TIGTA employees or production of TIGTA documents has been sought; and, (7) Individuals initiating

correspondence or inquiries processed or controlled by the Disclosure Section.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Requests for access to and/or amendment of records, (2) Responses to such requests, (3) Records processed and released in response to such requests, (4) Processing records, (5) Requests or subpoenas for testimony, (6) Testimony authorizations, (7) Referral letters, (8) Documents referred, (9) Record of disclosure forms, and (10) Other supporting documentation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 552a, 26 U.S.C. 6103, and 31 CFR 1.11.

PURPOSE(S):

The purpose of this system is to enable compliance with applicable Federal disclosure laws and regulations, including statutory record-keeping requirements. In addition, this system will be used to maintain records obtained and/or generated for purposes of responding to requests for access, amendment, and disclosure of TIGTA records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to:

(1) Disclose pertinent information to appropriate federal, state, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of, or for enforcing, or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law, or regulation;

(2) Disclose information to a federal, state, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which TIGTA is authorized to appear when: (a) The agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(4) Disclose information to a court, magistrate or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witness in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a court order where arguably relevant to a proceeding;

(5) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(6) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to an investigation or matter under consideration.

(7) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(8) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2;

(9) Provide information to other Offices of Inspectors General, the President's Council on Integrity and Efficiency, and the Department of Justice, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to Section 6(e) of the Inspector General Act of 1978, as amended, 5 U.S.C.A. Appendix 3, and

(10) To appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department 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 the Department'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:

Paper records and/or electronic media.

RETRIEVABILITY:

Name of the requestor, name of the subject of the investigation, and/or name of the employee requested to produce documents or to testify.

SAFEGUARDS:

The records are accessible to TIGTA personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RETENTION AND DISPOSAL:

TIGTA is in the process of requesting approval for a record retention schedule for records maintained in this system. These records will not be destroyed until TIGTA receives such approval.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Counsel, TIGTA, 1401 H Street NW., Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Written inquiries should be addressed to the Office of Chief Counsel, Disclosure Branch, Treasury Inspector General for Tax Administration, 1401 H Street NW., Room 469, Washington, DC 20005. This system of records may contain records that are exempt from the notification, access, and contesting records requirements pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' above.

RECORD SOURCE CATEGORIES:

Some records in this system are exempt from the requirement that the record source categories be disclosed pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2). Non-exempt record source categories include the following:

(1) Department of the Treasury personnel and records, (2) Incoming requests, and (3) Subpoenas and requests for records and/or testimony.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system may contain records that are exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). (See 31 CFR 1.36.)

TREASURY/DO .311

SYSTEM NAME:

TIGTA Office of Investigations Files.

SYSTEM LOCATION:

National Headquarters, Office of Investigations, 1401 H Street NW., Washington, DC 20005 and Field Division offices listed in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) The subjects or potential subjects of investigations; (2) The subjects of complaints received by TIGTA; (3) Persons who have filed complaints with TIGTA; (4) Confidential informants; and (5) TIGTA Special Agents.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Reports of investigations, which may include, but are not limited to, witness statements, affidavits, transcripts, police reports, photographs, documentation concerning requests and approval for consensual telephone and consensual non-telephone monitoring, the subject's prior criminal record, vehicle maintenance records, medical records, accident reports, insurance policies, and other exhibits and documents collected during an investigation; (2) Status and disposition information concerning a complaint or investigation including prosecutive action and/or administrative action; (3) Complaints or requests to investigate; (4) General case materials and documentation including, but not limited to, Chronological Case Worksheets (CCW), fact sheets, agent work papers, Record of Disclosure forms, and other case management documentation; (5) Subpoenas and evidence obtained in response to a subpoena; (6) Evidence logs; (7) Pen registers; (8) Correspondence; (9) Records of seized money and/or property; (10) Reports of laboratory examination, photographs, and evidentiary reports; (11) Digital image files of physical evidence; (12) Documents generated for purposes of TIGTA's undercover activities; (13) Documents pertaining to the identity of confidential informants; and (14) Other documents collected and/or generated by the Office of Investigations during the course of official duties.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. app. 3 and 5 U.S.C. 301.

PURPOSE(S):

The purpose of this system of records is to maintain information relevant to complaints received by TIGTA and collected as part of investigations conducted by TIGTA's Office of Investigations. This system also includes investigative material compiled by the IRS's Office of the Chief Inspector, which was previously maintained in the following systems of records: Treasury/IRS 60.001–60.007 and 60.009–60.010.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to:

(1) Disclose pertinent information to appropriate federal, state, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law or regulation;

(2) Disclose information to a federal, state, local, or other public authority maintaining civil, criminal, or other relevant enforcement information or other pertinent information that has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which TIGTA is authorized to appear when (a) the agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(4) Disclose information to a court, magistrate or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witness in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a court order where arguably relevant to a proceeding;

(5) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(6) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(7) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(8) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2;

(9) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing personnel actions or conducting administrative hearings or appeals, or if needed in the performance of other authorized duties;

(10) In situations involving an imminent danger of death or physical injury, disclose relevant information to an individual or individuals who are in danger; and

(11) Provide information to other Offices of Inspectors General, the President's Council on Integrity and Efficiency, and the Department of Justice, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to section 6(e) of the Inspector General Act of 1978, as amended, 5 U.S.C.A. Appendix 3; and,

(12) Disclose information to complainants, victims, or their representatives (defined for purposes here to be a complainant's or victim's legal counsel or a Senator or Representative whose assistance the complainant or victim has solicited) concerning the status and/or results of the investigation or case arising from the matters of which they complained and/or of which they were a victim, including, once the investigative subject has exhausted all reasonable appeals, any action taken. Information concerning the status of the investigation or case is limited strictly to whether the investigation or case is open or closed. Information concerning

the results of the investigation or case is limited strictly to whether the allegations made in the complaint were substantiated or were not substantiated and, if the subject has exhausted all reasonable appeals, any action taken.

(13) Disclose information to appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department 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 the Department'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 DISPENSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic media.

RETRIEVABILITY:

By name, Social Security Number, and/or case number.

SAFEGUARDS:

The records are accessible to TIGTA personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RETENTION AND DISPOSAL:

Some of the records in this system are maintained and disposed of in accordance with a record disposition schedule approved by the National Archives and Records Administration. TIGTA is in the process of requesting approval of new records schedules concerning all records in this system of records. Records not currently covered by an approved record retention schedule will not be destroyed until TIGTA receives the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Inspector General for Investigations, Office of Investigations, TIGTA, 1401 H Street NW., Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Written inquiries should be addressed to the Office of Chief Counsel, Disclosure Branch, Treasury Inspector General for Tax Administration, 1401 H Street NW., Room 469, Washington, DC 20005. This system of records may contain records that are exempt from the notification, access, and contesting records requirements pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' above.

RECORD SOURCE CATEGORIES:

Some records contained within this system of records are exempt from the requirement that the record source categories be disclosed pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2). Non-exempt record source categories include the following: Department of the Treasury personnel and records, complainants, witnesses, governmental agencies, tax returns and related documents, subjects of investigations, persons acquainted with the individual under investigation, third party witnesses, Notices of Federal Tax Liens, court documents, property records, newspapers or periodicals, financial institutions and other business records, medical records, and insurance companies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Some records contained within this system of records are exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). (See 31 CFR 1.36)

APPENDIX A—OFFICE OF INVESTIGATIONS, TIGTA

FIELD DIVISION SAC OFFICES

Treasury IG for Tax Administration, 401 West Peachtree St., Atlanta, GA 30308.

Treasury IG for Tax Administration, 230 S. Dearborn St., IL 60604.

Treasury IG for Tax Administration, 1919 Smith Street, Houston, TX 77002.

Treasury IG for Tax Administration, 1999 Broadway, Denver, CO 80202.

Treasury IG for Tax Administration, 201 Varick Street, New York, NY 10014.

Treasury IG for Tax Administration, Ronald Dellums Federal Bldg., 1301 Clay Street, Oakland, CA 94612.

Treasury IG for Tax Administration, 2970 Market Street, Philadelphia, PA 19104.

Treasury IG for Tax Administration, 12119 Indian Creek Court, Beltsville, MD 20705.

APPENDIX B—AUDIT FIELD OFFICES, TIGTA

Treasury IG for Tax Administration, 310 Lowell Street, Andover, MA 01812.

Treasury IG for Tax Administration, 401 W. Peachtree St., Atlanta, GA 30308–3539.

Treasury IG for Tax Administration, Atlanta Service Center, 4800 Buford Highway, Chamblee, GA 30341.

Treasury IG for Tax Administration, 3651 South Interstate 35, Austin, TX 78741.

Treasury IG for Tax Administration, 31 Hopkins Plaza, Fallon Federal Building, Baltimore, MD 21201.

Treasury IG for Tax Administration, 1040 Waverly Ave, Holtsville, NY 11742.

Treasury IG for Tax Administration, 200 W Adams, Chicago, IL 60606.

Treasury IG for Tax Administration, Peck Federal Office Bldg., 550 Main Street, Room 5028, Cincinnati, OH 45201.

Treasury IG for Tax Administration, 4050 Alpha Road, Dallas, TX 75244.

Treasury IG for Tax Administration, 600 17th Street, Denver, CO 80202.

Treasury IG for Tax Administration, Fresno Service Center, 5045 E. Butler Stop 11, Fresno, CA 93727.

Treasury IG for Tax Administration, 7850 SW 6th Court, Plantation, FL 33324.

Treasury IG for Tax Administration, 333 West Pershing Road, Kansas City, MO 64108.

Treasury Inspector General for Tax Administration—Audit, 24000 Avila Road, Laguna Niguel, CA 92677.

Treasury IG for Tax Administration, 300 N. Los Angeles Street, Los Angeles, CA 90012.

Treasury IG for Tax Administration, 5333 Getwell Rd, Memphis, TN 38118.

Treasury IG for Tax Administration, 1160 West 1200 South, Ogden, Utah 84201.

Treasury IG for Tax Administration, Federal Office Building, 600 Arch Street, Philadelphia, PA 19106.

Treasury IG for Tax Administration, 915 2nd Avenue, Seattle, WA 98174.

Treasury IG for Tax Administration, 1222 Spruce, St. Louis, MO 63103.

Treasury IG for Tax Administration, 92 Montvale Avenue, Stoneham, MA 02180.

Treasury IG for Tax Administration, Ronald Dellums Federal Bldg., 1301 Clay Street, Oakland, CA 94612.

TREASURY/DO .411

SYSTEM NAME:

Intelligence Enterprise Files

SYSTEM LOCATION:

The Office of Intelligence and Analysis (OIA), Department of the Treasury, Washington, DC. The system may be accessed by Departmental personnel in other components of the Treasury Department with the permission of OIA, provided that such personnel are determined by OIA to have the requisite security clearance and the need to know information maintained in the system.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Individuals related to:

A. The capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations, foreign persons, international terrorists, international narcotics traffickers, members of transnational criminal organizations, proliferators of weapons of mass destruction, and their associates, supporters, and facilitators;

B. Foreign financial and economic activities pertaining to national security;

C. Activities constituting a threat to the national security, foreign policy, or the economy of the United States, or that are preparatory to, facilitate, or support such activities, including:

i. Financial crimes, including money laundering, unlicensed money transmission, evading reporting requirements, access device fraud, financial institution fraud, and activities affecting the safety or soundness of financial institutions, in accordance with Title 18 and Title 31 of the United States Code;

ii. Suspicious financial transactions and other data required to be reported by the Bank Secrecy Act, 31 U.S.C. 5311 *et seq.,* because they have a high degree of usefulness in the conduct of intelligence or counterintelligence activities or for other national security purposes;

iii. Transactions related to individuals subject to or under consideration for the imposition of economic sanctions;

iv. Activities that could reasonably be expected to assist in the development of a weapon of mass destruction, including attempts to import, procure, possess, store, develop, or transport nuclear or radiological material;

v. Activities against or threats to the United States or U.S. persons and interests by foreign or international terrorist groups or individuals involved in terrorism;

vi. Activities to identify, create, exploit, or undermine vulnerabilities of the Treasury Department's information systems and national security systems infrastructure;

vii. Activities, not wholly conducted within the United States, which violate or may violate the laws that prohibit the production, transfer, or sale of narcotics or substances controlled in accordance with Title 21 of the United States Code, or those associated activities otherwise prohibited by Titles 21 and 46 of the United States Code;

viii. Activities, not wholly conducted within the United States, which otherwise violate or may violate United States or foreign criminal laws;

ix. Activities, not wholly conducted within the United States, that constitute genocide, mass atrocities, or other grave breaches of human rights;

x. Activities that impact or concern the security, safety, and integrity of our international borders, such as those that may constitute violations of the immigration or customs laws of the United States;

D. Espionage, the improper release of sensitive or classified information, sabotage, assassination, or other intelligence activities conducted by or on behalf of foreign powers, organizations, persons, or their agents, or international terrorist organizations, international narcotics traffickers, members of transnational criminal organizations, proliferators of weapons of mass destruction, and their associates, supporters, and facilitators;

E. Activities where the health or safety of an individual may be threatened;

F. Information necessary for the provision of intelligence support to the Treasury Department.

(2) Individuals who voluntarily request assistance or information, through any means, from OIA, and individuals who consent to providing information, which may relate to a threat or otherwise affect the national security of the United States.

(3) Individuals who are or have been associated with Treasury Department or OIA activities or with the administration of the Department of the Treasury, including information about individuals that is otherwise required to be maintained by law.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Records containing classified and unclassified intelligence information, counterintelligence information, counterterrorism information, and information, including records pertaining to law enforcement that are related to national security. This includes source records and other forms of ''raw'' intelligence as well as the analysis of this information, obtained from all entities of the Federal government, including the Intelligence Community; foreign governments, persons, or other entities including international organizations; and state, local, tribal, and territorial government agencies.

(2) Records containing information pertaining to OIA's responsibilities overtly collected from record subjects, individual members of the public, and private sector entities.

(3) Records containing information reported pursuant to and maintained consistent with the Bank Secrecy Act.

(4) Records containing information pertaining to the imposition and enforcement of economic sanctions, including reports pursuant to chapter V of Title 31, Code of Federal Regulations, and information provided through license applications, requests to have funds unblocked, and requests for reconsideration of a designation.

(5) Records containing information obtained from Intelligence Community elements or other entities about individuals who are or may be engaged in activities related to terrorism, transnational narcotics trafficking, transnational criminal organizations, the proliferation of weapons of mass destruction, or other threats to the national security, economy, or foreign policy of the United States.

(6) Records containing law enforcement or other information received from other government agencies pertaining to potential threats to the national security, the economy, or foreign policy of the United States.

(7) Records containing operational and administrative records, including correspondence records.

(8) Records containing information related to or obtained to ensure the security of the Treasury Department, including through authorized physical, personnel, information systems security, and insider threat investigations, inquiries, analysis, and reporting.

(9) Records contain publicly available information, related to lawful OIA activities, about individuals as derived from media, including periodicals, newspapers, broadcast transcripts, and other public reports and computer

databases, including those available by subscription to the public.

(10) Records about individuals who voluntarily provide any information contained within the system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 31 U.S.C. 311–312; Executive Orders 12333, 12968, 13388, and 13526, as amended.

PURPOSE(S):

The records in this system will be used to fulfill OIA's statutory and Executive Order mandates to collect (overtly or through publicly-available sources), receive, analyze, collate, produce, and disseminate information, intelligence, and counterintelligence related to the operations and responsibilities of the entire Department, including all components and bureaus. The system will allow OIA to carry out its functions of discharging its responsibilities while building a robust analytical capability on terrorist financing; coordinating and overseeing the work of intelligence analysts in Treasury Department components; focusing intelligence efforts on the highest priorities of the Department; ensuring that the intelligence needs of OFAC and FinCEN are met; and providing intelligence support to senior Department officials on a wide range of international economic and other relevant issues.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to disclose pertinent information to:

(1) Any United States, foreign, or multinational government or agency, or private sector individual or organization, with responsibilities relating to the national security, economy, or foreign policy of the United States, including responsibilities related to the implementation of or compliance with applicable authorities, to analyze, counter, deter, or prevent threats related to foreign intelligence or counterintelligence activities, terrorism, international narcotics traffickers, transnational criminal organizations, or proliferators of weapons of mass destruction;

(2) Any United States, foreign, or multinational government or agency with the responsibility and authority for investigating, prosecuting, or otherwise enforcing a civil or criminal law, regulation, rule, order, or contract, where the information on its face or when combined with other information indicates a potential violation of any such law, regulation, rule, order, or contract enforced by that government or agency;

(3) Any Federal banking agency when OIA believes that the information raises significant concerns regarding the safety or soundness of any depository institution doing business in the United States;

(4) Any United States agency, including Federal banking agencies, where the information is relevant to such agency's supervisory responsibilities;

(5) Any United States, foreign, or multinational government or agency, or other entity, including private sector individuals and organizations, where disclosure is in furtherance of the Treasury Department's or OIA's information-sharing responsibilities under the National Security Act of 1947, as amended, the Intelligence Reform and Terrorism Prevention Act of 2004, as amended, Executive Order 12333, as amended, or any successor order, statute, national security directive, intelligence community directive, or other directive, or any classified or unclassified implementing procedures promulgated pursuant to such orders and directives;

(6) Any U.S. agency lawfully engaged in the collection of intelligence (including national intelligence, foreign intelligence, and counterintelligence), counterterrorism, national security, law enforcement or law enforcement intelligence, or other information, where disclosure is undertaken for intelligence, counterterrorism, national security, insider threat, or related law enforcement purposes, as authorized by United States law or Executive orders;

(7) Any other element of the Intelligence Community, as defined by Executive Order 12333, as amended, or any successor order, for the purpose of allowing that agency to determine whether the information is relevant to its responsibilities and can be retained by it;

(8) Any United States, foreign, or multinational government or agency, or private sector individual or organization, with responsibility for imposing and enforcing economic sanctions or for complying with or implementing economic sanctions, for the purpose of carrying out such responsibility;

(9) Any United States agency with responsibility for activities related to counterintelligence or the detection of insider threats, for the purpose of conducting such activities;

(10) Any United States, foreign, or multinational government or agency, if the information is relevant to the requesting entity's decision or to a Treasury Department decision concerning the hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(11) Any foreign persons or foreign government agencies, international organizations, and multinational agencies or entities, including private entities, under circumstances or for purposes mandated by, imposed by, or conferred in, Federal statute, treaty, or other international agreement or arrangement in accordance with OIA's authorities;

(12) Any individual, organization, or entity, as appropriate, for the purpose of guarding it against or responding to an actual or potential serious threat, to the extent the information is relevant to the protection of life, health, or property;

(13) Representatives of the Department of Justice or other United States entities, to the extent necessary to obtain their advice on any matter that is within their official responsibilities to provide;

(14) Any federal agency, a court, or a party in litigation before a court or in an administrative proceeding being conducted by a federal agency, when the Federal Government is a party to the judicial or administrative proceeding. In those cases where the Federal Government is not a party to the proceeding, records may be disclosed pursuant to a subpoena by a court, agency, or other entity of competent jurisdiction where arguably relevant to a proceeding or in connection with a criminal proceeding;

(15) The Department of Justice (DOJ) for the purpose of receiving legal advice and representation;

(16) Contractors, grantees, experts, consultants, interns, volunteers and others (including agents of the foregoing) performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Treasury Department, when necessary to accomplish such function;

(17) Individual members or staff of the United States Senate Select Committee on Intelligence, the United States Senate Committee on Banking, Housing, and Urban Affairs, the United States House Permanent Select Committee on Intelligence, and the United States House Committee on Financial Services in connection with the exercise of their oversight and legislative functions;

(18) The National Archives and Records Administration (NARA), for the purpose of records management;

(19) Any agency, organization, or individual for the purposes of performing audit or oversight of the Treasury Department or OIA, as

authorized by law and as necessary and relevant to such audit or oversight function;

(20) The President's Foreign Intelligence Advisory Board, the Intelligence Oversight Board, any successor organizations, and any intelligence or national security oversight entities established by the President, when the Assistant Secretary for Intelligence and Analysis determines that disclosure will assist these entities in the performance of their oversight functions;

(21) Agencies, entities, and persons when: (1) The Treasury Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department'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 stored electronically or on paper in secure facilities. The records are stored in file folders or on magnetic discs, tapes, or electronic media.

RETRIEVABILITY:

Data may be retrieved by an individual's name or other identifier, such as Social Security number, phone number, or case number.

SAFEGUARDS:

Records in electronic and physical form in this system are maintained in secure facilities protected by appropriate physical and technological safeguards with access limited by password or access code only to authorized personnel. Records in this system are safeguarded in accordance with applicable laws, rules, and policies, including Intelligence Community standards, Treasury Department information technology security policies, and the Federal Information Security Management Act. Classified information is stored appropriately in a secured, certified, and accredited facility, in secured databases and containers, and in accordance with other applicable requirements, including those pertaining to classified information. The system incorporates logging functions that facilitate the auditing of individual use and access.

RETENTION AND DISPOSAL:

Records will be retained and disposed of in accordance with a records retention and disposal schedule to be submitted to and approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Intelligence Information Systems, Office of Intelligence and Analysis, Department of the Treasury, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

This system of records contains classified and controlled unclassified information related to intelligence, counterintelligence, national security, and law enforcement programs. As a result, records in this system have been exempted from notification, access, and amendment to the extent permitted by the Privacy Act, 5 U.S.C. 552a(k).

In accordance with 31 CFR part 1, subpart C, Appendix A, individuals wishing to be notified if they are named in non-exempt records in this system of records, to gain access to such records maintained in this system, or seek to contest the content of such records, must submit a written request containing the following elements: (1) Identify the record system; (2) identify the category and type of records sought; and (3) provide at least two items of secondary identification. Address inquiries to: Privacy Act Request, DO, Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

RECORD ACCESS PROCEDURES:

See ''NOTIFICATION PROCEDURES'' above.

CONTESTING RECORD PROCEDURES:

See ''NOTIFICATION PROCEDURES'' above.

RECORD SOURCE CATEGORIES:

Information contained in this system is obtained from individuals; other government, non-government, commercial, public, and private agencies and organizations, both domestic and foreign; media, including periodicals, newspapers, broadcast transcripts, and publicly-available databases; intelligence source documents; investigative reports; and correspondence.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Records in this system related to classified and controlled unclassified information related to intelligence, counterintelligence, national security, and law enforcement programs are exempt from 5 U.S.C. 552a(c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(1). See 31 CFR 1.36.

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FEDERAL REGISTER

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Part IV

Department of Defense

2 CFR Parts 1103, 1104, et al. and 32 CFR Parts 21, 22, et al.
Revised Interim Implementation of Governmentwide Guidance for Grants and Cooperative Agreements; Definitions for DoD Grant and Agreement Regulations in Subchapters A through F; Format for DoD Grant and Cooperative Agreement Awards; National Policy Requirements: General Award Terms and Conditions; Administrative Requirements Terms and Conditions for Cost-Type Awards to Nonprofit and Governmental Entities; and DoD Grant and Agreement Regulations; Proposed Rules

DEPARTMENT OF DEFENSE

Office of the Secretary

2 CFR Parts 1103, 1104, and 1125

[DOD–2016–OS–0048]

RIN 0790–AJ45

Revised Interim Implementation of Governmentwide Guidance for Grants and Cooperative Agreements

AGENCY: Office of the Secretary, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: This notice of proposed rulemaking (NPRM) is the first of a sequence of six NPRM documents in this issue of the **Federal Register** that collectively establish for DoD grants and cooperative agreements an updated interim implementation of Governmentwide guidance on administrative requirements, cost principles, and audit requirements for Federal awards. This NPRM removes a part of the DoD Grant and Agreement Regulations (DoDGARs) and replaces it with a new DoDGARs part containing a revised interim implementation of the guidance and establishes seven subchapters within DoD's chapter of the Grants and Agreements title of the Code of Federal Regulations. The purpose of this NPRM is to provide an organizing framework for the DoDGARs to make it easier for users of the regulations to locate the content that they need.

DATES: To ensure that they can be considered in developing the final rule, comments must be received at either the Web site or mailing address indicated below by February 6, 2017.

ADDRESSES: You may submit comments identified by docket number, or by Regulatory Information Number (RIN) and title, by either of the following methods:

The Web site: http://www.regulations.gov. Follow the instructions at that site for submitting comments.

Mail: Department of Defense, Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, ATTN: Box 24, Alexandria, VA 22350–1700.

Instructions: All submissions must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from the public is to make the submissions available for public viewing on the Internet at *http://www.regulations.gov* without change (*i.e.,* as they are received, including any personal identifiers or contact information).

FOR FURTHER INFORMATION CONTACT: Wade Wargo, Basic Research Office, telephone 571–372–2941.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of the Regulatory Action

1. The Need for the Regulatory Action and How the Action Meets That Need

The Department of Defense Grant and Agreement Regulations (DoDGARs) need to be updated. Much of the updating is required to implement Office of Management and Budget guidance to Federal agencies on administrative requirements, cost principles, and audit requirements applicable to Federal grants, cooperative agreements, and other assistance instruments (2 CFR part 200). DoD established an interim implementation of that guidance at 2 CFR part 1103 in December 2014, pending needed updates to the DoDGARs.

The current regulatory action, which is in this NPRM and five additional NPRMs immediately following it in this issue of the **Federal Register**, implements the OMB guidance as it applies to general terms and conditions of DoD grants and cooperative agreements. It thereby takes a major step toward the needed updating of the DoDGARs.

2. Legal Authorities for the Regulatory Action

There are two statutory authorities for this NPRM:

- 10 U.S.C. 113, which establishes the Secretary of Defense as the head of the Department of Defense; and
- 5 U.S.C. 301, which authorizes the head of an Executive department to prescribe regulations for the governance of that department and the performance of its business.

B. Summary of the Major Provisions of the Regulatory Action

The six NPRMs propose to establish eleven new DoDGARs parts and make conforming changes to existing DoDGARs parts. This NPRM, the first of the six, proposes a new part 2 CFR part 1104 to serve as the central hub to direct DoD Components on the portions of the DoDGARs that apply to DoD grants and cooperative agreements for various pre-award, time-of-award, and post-award purposes, pending completion of the remaining updates to the DoDGARs that are needed to fully implement the OMB guidance. It also proposes to remove the interim implementation of the guidance published in December 2014 at 2 CFR part 1103, as that implementation is superseded by the proposed 2 CFR part 1104. As described more fully in Section II.C of this **SUPPLEMENTARY INFORMATION** section, the other five NPRMs following this one propose:

- A new 2 CFR part 1120 to establish a standard format for organizing the content of DoD Components' grant and cooperative agreement awards;
- New 2 CFR parts 1126, 1128, 1130, 1132, 1134, 1136, and 1138 to standardize the organization and, to the extent practicable, the wording of the administrative requirements portion of the general terms and conditions of awards to types of recipients covered by the OMB guidance in 2 CFR part 200;
- A new 2 CFR part 1122 to standardize the organization and, to the extent practicable, the wording of the national policy requirements portion of the general terms and conditions of awards to all types of recipients;
- A new 2 CFR part 1108 with definitions of terms used in the other new DoDGARs parts proposed in this regulatory action; and
- Conforming changes to portions of the DoDGARs in title 32 of the CFR, including the removal of the DoD implementations of OMB Circulars A–110 and A–102 in 32 CFR parts 32 and 33, respectively, as both of those OMB circulars were superseded by the new OMB guidance in 2 CFR part 200.

C. Costs and Benefits

By increasing uniformity in the form and content of awards across DoD, the regulatory action in the six NPRMs benefit both recipient entities who receive awards from multiple DoD Component awarding offices and auditors of DoD awards. The standard format should enable them to more easily and quickly find requirements in different offices' awards, as any particular requirement should appear in a standard location. Standard wording and use of plain language should reduce the time that otherwise would be spent reading and interpreting the offices' differently worded terms and conditions for the same requirements. Based on comments DoD has received from recipients since it established the DoDGARs in the 1990s, we expect that the standard format, standard wording for general terms and conditions, and use of plain language would lessen administrative burdens for recipients and improve both transparency and ease of compliance.

These changes also benefit offices within DoD that are responsible for post-award administration of grants and cooperative agreements made by DoD Components' awarding offices. Having

greater uniformity in the location and wording of terms and conditions, and having those terms and conditions written in plain language, will enable them to more quickly find and more easily understand requirements within different offices' awards that are relevant to their compliance monitoring functions.

The uniformity across DoD that is promoted by this regulatory action also should help to lessen administrative burdens and costs for recipients, thereby providing added benefits by increasing the productivity of the defense programs supported by the awards. While it is difficult to quantify the amount by which burdens and associated costs will be reduced, it is pertinent to note that benefits of establishing, for the first time, a uniform implementation of OMB guidance, national policy requirements, and DoD policy through general terms and conditions extend to more than 15,000 obligating actions each year that:

- Are taken by 100 awarding offices located across the United States and abroad that are under the Departments of the Army, Navy, and Air Force and 11 other DoD Components.
- Provide support to various types of recipients, including institutions of higher education, nonprofit organizations, States, local governments, and for-profit entities.
- Provide $4–6 billion to carry out diverse programs, including defense research, support to States for the National Guard, and economic assistance to communities impacted by defense downsizing or costs associated with education of military dependents.

The following portion of this **SUPPLEMENTARY INFORMATION** section provides additional background information and a more complete overview of the six NPRMs.

II. Additional Background and Overview of the Six NPRMs

This NPRM removes a part of the DoD Grant and Agreement Regulations (DoDGARs) that DoD adopted on December 19, 2014, as its interim implementation of the guidance, pending completion of more extensive updates to the DoDGARs needed to implement the guidance on a longer-term basis. It replaces that part with a new DoDGARs part containing a revised interim implementation of the guidance.

The revised implementation in the new part incorporates ten other proposed new DoDGARs parts. Those ten other new parts, proposed in NPRM documents following this one, do several things. First, they provide standard wording of general terms and conditions governing administrative requirements for DoD grant and cooperative agreement awards to educational, nonprofit, and governmental entities subject to the Governmentwide guidance. Second, they provide standard wording for general terms and conditions addressing national policy requirements for DoD grant and cooperative agreement awards to all types of entities. Third, they establish a standard format for DoD grant and cooperative agreement awards. Finally, they establish a central DoDGARs part with definitions of terms used in those regulations.

In conjunction with establishing the revised implementation of the Governmentwide guidance, this NPRM proposes to establish seven subchapters within DoD's chapter of the Grants and Agreements title of the Code of Federal Regulations. The purpose of the proposed subchapters is to provide an organizing framework for the DoDGARs to make it easier for users of the regulations to locate the content that they need.

A. Background on the DoDGARs

The DoDGARs are the rules on which DoD Component awarding offices rely as the primary source of requirements governing their award and administration of grants and cooperative agreements. While the regulations are intended to primarily address DoD Components, direction to DoD Components in the DoDGARs impacts requirements for DoD award recipients and is used by auditors and others outside the DoD when carrying out their responsibilities related to DoD awards.

When DoD established the DoDGARs in the 1990s, it did so in part as an integrated and comprehensive regulatory implementation of pertinent Governmentwide guidance. The pertinent guidance that the DoDGARs implemented at that time included the administrative requirements in OMB Circulars A–110 and A–102 and, as they applied to grants and cooperative agreements, the cost principles in OMB Circulars A–21, A–87, and A–122, and the single audit requirements in OMB Circular A–133.

To fully meet its needs, DoD established some portions of the DoDGARs to address awards that were outside the scope of the Governmentwide guidance. For example, it established a DoDGARs part to address grant and cooperative agreement awards to for-profit entities and another part to address Technology Investment Agreements, which include assistance awards other than grants and cooperative agreements. For optimal effectiveness, those additional portions of the DoDGARs were interconnected with portions that implemented Governmentwide guidance in OMB circulars.

B. Background on the DoDGARs Implementation of the New Governmentwide Guidance

On December 26, 2013, the Office of Management and Budget (OMB) issued updated Governmentwide guidance on grants and cooperative agreements in 2 CFR part 200, ''Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.'' The new guidance merged content previously contained in OMB Circulars A–110, A–102, A–21, A–87, A–122, and A–133 that DoD had implemented in the DoDGARs. In superseding those circulars, the new guidance altered the organization and content of those circulars in ways that necessitated significant updating of the DoDGARs.

As the guidance called for Federal agencies' regulatory implementations to be in effect within 12 months—*i.e.,* by December 26, 2014—DoD adopted a rule on December 19, 2014, to implement the new guidance on an interim basis, pending the more comprehensive update to the DoDGARs that was needed but would take longer to put in effect.

DoD is proposing the rules contained in the sequence of NPRMs in this issue of the **Federal Register** as the first major portion of the needed updates to the DoDGARs. That updating enables recipients, DoD Components, and others who use the DoDGARs to begin to benefit from these updates without delay, while DoD finishes preparing the additional rules to be proposed for public comment, as needed to complete its implementation of the guidance and make other updates to the DoDGARs.

This first set of updates to the DoDGARs focuses on the establishment of:

- A standard award format for DoD grants and cooperative agreement awards; and
- Standard wording for general terms and conditions of awards, including: (1) Administrative requirements for awards to types of recipients subject to 2 CFR part 200; and (2) national policy requirements for awards to all types of entities. The proposed terms and conditions are written in plain language. The associated regulatory text with proposed prescriptions for DoD Components' use of the standard wording provides limited flexibility to vary from the standard wording when appropriate.

C. Overview of the Six NPRMs in This Issue of the ***Federal Register***

1. The Proposed 2 CFR Part 1104 as the Successor to 2 CFR Part 1103

The DoD is proposing to remove 2 CFR part 1103, the rule it adopted in December 2014 as its initial interim implementation of the Governmentwide guidance in 2 CFR part 200, and replace it with a new 2 CFR part 1104. The proposed part 1104 serves as the central hub to direct DoD Components' use of the other ten new parts that the documents following this one in this issue of the **Federal Register** propose for adoption in chapter XI of 2 CFR, as well as parts of the DoDGARs that will remain for the time being in subchapter C, chapter I of title 32 of the CFR. This document also proposes to subdivide chapter XI of title 2 of the CFR into seven subchapters corresponding to subject matter areas into which the proposed new DoDGARs parts will be organized.

2. Standard Award Format

The document immediately following this one in this issue of the **Federal Register** proposes a new 2 CFR part 1120 to establish a standard format for DoD Components' grant and cooperative agreement awards, as discussed in Section I.C of this **SUPPLEMENTARY INFORMATION** section.

3. General Terms and Conditions Addressing Administrative Requirements

The third document in this sequence of NPRMs in this issue of the **Federal Register** proposes seven new parts of the DoDGARs that collectively establish a standard organization of articles of general terms and conditions addressing administrative requirements for awards to educational, nonprofit, and governmental entities subject to the guidance in 2 CFR part 200, as well as standard wording for the content of those articles. Administrative requirements are those in areas such as recipient program and financial management; property administration; recipient procurement procedures; and reporting. They include implementation of cost principles through terms and conditions addressing allowable costs, as well as audit requirements. The seventh of the proposed new parts addresses requirements for recipients concerning subawards, including the administrative and national policy requirements that flow down to subrecipients at lower tiers below DoD awards.

4. General Terms and Conditions Addressing National Policy Requirements

The fourth in the sequence of six NPRM documents proposes a new 2 CFR part 1122 on national policy requirements. National policy requirements are those in areas such as nondiscrimination, the environment, and labor standards that originate in Federal statutes, Executive orders, or regulations. The proposed new part specifies a standard organization of general terms and conditions addressing national policy requirements into four articles. It also provides standard wording of terms and conditions for national policy requirements that are commonly applicable to DoD Components' grants and cooperative agreements. This standard format and wording are for DoD Components' awards to all types of recipient entities, including for-profit and other entities not subject to the Governmentwide guidance in 2 CFR part 200 to the extent that the national policy requirements apply to them.

5. Definitions

The fifth NPRM in this sequence proposes a new 2 CFR part 1108 with definitions of terms to be used throughout all portions of the DoDGARs in chapter XI of title 2 of the CFR other than the portion containing regulations implementing specific national policy requirements that provide their own definitions of terms. Examples of the latter regulations are DoD implementations of nonprocurement suspension and debarment, lobbying, and drug-free workplace requirements.

6. Conforming Amendments to Parts of the DoDGARs in Title 32 of the CFR

The final NPRM in this sequence removes two existing parts of the DoDGARs in subchapter C, chapter I of title 32 of the CFR. The two parts removed are 32 CFR part 32, which was the DoD implementation of the 1993 issuance of OMB Circular A–110, and 32 CFR part 33, which was DoD's adoption of the common rule implementing OMB Circular A–102. The parts are proposed for removal because OMB's issuance of the new Governmentwide guidance in 2 CFR part 200 superseded both of those circulars. That final NPRM in this issue of the **Federal Register** also proposes amendments to other parts of the DoDGARs that will remain for now in title 32 of the CFR, in order to: (1) Conform them to the proposed new DoDGARs parts in Title 2 of the CFR that are described in sections II.C.1 through 5 of this **SUPPLEMENTARY INFORMATION** section; and (2) update other outdated references and make other minor changes that are needed.

III. Future Steps

DoD will complete the remaining needed updates of the DoDGARs in a subsequent set of proposals for public comment. Those proposals will focus on portions of the DoDGARs that specify pre-award and time-of-award requirements for DoD Component awarding offices and post-award requirements for DoD administering offices. All portions of the DoDGARs remaining in chapter I, subchapter C of title 32 of the CFR will be relocated at that time to chapter XI of title 2 of the CFR, with any updating that may be needed.

IV. Regulatory Analysis

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

Executive Order 12866, as supplemented by Executive Order 13563, directs each Federal agency to: Propose regulations only after determining that benefits justify costs; tailor regulations to minimize burdens on society, consistent with achieving regulatory objectives; maximize net benefits when selecting among regulatory approaches; specify performance objectives, to the extent feasible, rather than the behavior or manner of compliance; and seek the views of those likely to be affected before issuing a notice of proposed rulemaking, where feasible and appropriate. The Department of Defense has determined that a regulatory implementation of 2 CFR part 200 that includes standard wording of general terms and conditions for DoD Components' grant and cooperative agreement awards will maximize long-term benefits in relation to costs and burdens for recipients of those awards. In providing—for the first time—uniformity across research and other awards, the approach will benefit institutions of higher education and other types of recipients that receive awards from diverse defense programs and numerous DoD Component awarding offices. The Department informally consulted representatives of the most affected recipient community during development of this regulatory proposal. This rule has been designated a ''significant regulatory action'' under section 3(f) of Executive Order 12866, although not an economically

significant one. Accordingly, the rule has been reviewed by OMB.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) (2 U.S.C. 1532) requires that a Federal agency prepare a budgetary impact statement before issuing a rule that includes any Federal mandate that may result in the expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in 1995 dollars, updated annually for inflation. In 2015, that inflation-adjusted amount in current dollars is approximately $146 million. The Department of Defense has determined that this proposed regulatory action will not result in expenditures by State, local, and tribal governments, or by the private sector, of that amount or more in any one year.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires an agency that is proposing a rule to provide a regulatory flexibility analysis or to certify that the rule will not have a significant economic impact on a substantial number of small entities. The Department of Defense certifies that this proposed regulatory action will not have a significant economic impact on substantial number of small entities beyond any impact due to provisions of it that implement OMB guidance at 2 CFR part 200.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35; 5 CFR part 1320, appendix A.1) (PRA), the Department of Defense has determined that there are no new collections of information contained in this proposed regulatory action.

Executive Order 13132, ''Federalism''

Executive Order 13132 establishes certain requirements that an agency must meet when it proposes a regulation that has Federalism implications. This proposed regulatory action does not have any Federalism implications.

List of Subjects in 2 CFR Parts 1103, 1104, and 1125

Business and industry, Colleges and universities, Cooperative agreements, Grants administration, Hospitals, Indians, Nonprofit organizations, Small business, State and local governments.

Accordingly, under the authority of 5 U.S.C. 301 and 10 U.S.C. 113, 2 CFR chapter XI is proposed to be amended as follows:

PART 1103—[REMOVED]

■ 1. Part 1103 is removed.

■ 2. Subchapter A to chapter XI, consisting of parts 1100 through 1109, is added to read as follows:

Subchapter A—General Matters and Definitions

PARTS 1100–1103—[RESERVED]

PART 1104—REVISED INTERIM IMPLEMENTATION OF GOVERNMENTWIDE GUIDANCE FOR GRANTS AND COOPERATIVE AGREEMENTS

Sec.
1104.1 Purpose of this part.
1104.100 Format of DoD Components' grant and cooperative agreement awards.
1104.105 Regulations governing DoD Components' general terms and conditions.
1104.110 Regulations governing DoD Components' award-specific terms and conditions.
1104.115 Regulations governing DoD Components' internal procedures.
1104.120 Definitions.

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

§ 1104.1 Purpose of this part.

This part provides an update to the DoD interim implementation of OMB guidance in 2 CFR part 200. It supersedes the initial interim implementation of that guidance that DoD adopted in 2 CFR part 1103 on December 19, 2014.

§ 1104.100 Format of DoD Components' grant and cooperative agreement awards.

DoD Components must conform the format of new grant and cooperative agreement awards to the standard format specified by part 1120 of the DoD Grant and Agreement Regulations (2 CFR part 1120). The standard format provides locations within the award for:

(a) General terms and conditions, including the administrative and national policy requirements discussed in § 1104.105(a) and (b), respectively.

(b) Any award-specific terms and conditions discussed in § 1104.110.

§ 1104.105 Regulations governing DoD Components' general terms and conditions.

(a) *Administrative requirements.* On an interim basis pending completion of the update of the DoD Grant and Agreement Regulations to implement Office of Management and Budget (OMB) guidance published in 2 CFR part 200, the following regulatory provisions govern the administrative requirements to be included in general terms and conditions of DoD Components' new awards:

(1) The provisions of parts 1126 through 1138 of the DoD Grant and Agreement Regulations (2 CFR parts 1126 through 1138, which comprise subchapter D of this chapter) govern the administrative requirements to be included in the general terms and conditions of DoD Components' new grant and cooperative agreement awards to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes.

(2) Part 34 of the DoD Grant and Agreement Regulations (32 CFR part 34) governs the administrative requirements to be included in general terms and conditions of DoD Components' new grant and cooperative agreement awards to for-profit entities.

(b) *National policy requirements.* Part 1122 of the DoD Grant and Agreement Regulations (2 CFR part 1122) governs the national policy requirements to be included in DoD Components' new grant and cooperative agreement awards to all entities.

§ 1104.110 Regulations governing DoD Components' award-specific terms and conditions.

On an interim basis pending completion of the update of the DoD Grant and Agreement Regulations to implement Office of Management and Budget (OMB) guidance published in 2 CFR part 200:

(a) The guidance in 2 CFR part 200 governs administrative requirements to be included in any award-specific terms and conditions used to supplement the general terms and conditions of a new grant or cooperative agreement award to an institution of higher education, nonprofit organization, State, local government, or Indian tribe.

(b) Part 34 of the DoD Grant and Agreement Regulations (32 CFR part 34) governs the administrative requirements to be included in any award-specific terms and conditions of DoD Components' new grant and cooperative agreement awards to for-profit entities.

§ 1104.115 Regulations governing DoD Components' internal procedures.

On an interim basis pending completion of the update of the DoD Grant and Agreement Regulations to implement Office of Management and Budget (OMB) guidance published in 2 CFR part 200, DoD Components' internal pre-award, time-of-award, and post-award procedures will continue to comply with requirements in parts 21 and 22 of the DoD Grant and Agreement Regulations (32 CFR parts 21 and 22).

§ 1104.120 Definitions.

(a) *DoD Grant and Agreement Regulations* means the regulations in

chapter I, subchapter C of title 32, Code of Federal Regulations, and chapter XI of title 2, Code of Federal Regulations.

(b) *Other terms.* See part 1108 of the DoD Grant and Agreement Regulations for definitions of other terms used in this part.

PARTS 1105–1109—[RESERVED]

■ 3. Subchapter B to chapter XI, consisting of parts 1110 through 1119, is added and reserved to read as follows:

Subchapter B—[RESERVED]

PARTS 1110–1119—[RESERVED]

■ 4. Subchapter C to chapter XI, consisting of parts 1120 through 1125, is added to read as follows:

Subchapter C—Award Format and National Policy Terms and Conditions for All Grants and Cooperative Agreements

PART 1120–1124—[RESERVED]

PART 1125—[TRANSFERRED TO SUBCHAPTER C]

■ 5. Part 1125 is transferred to subchapter C.

■ 6. Subchapter D to chapter XI, consisting of parts 1126 through 1140, is added to read as follows:

Subchapter D—Administrative Requirements Terms and Conditions for Cost-Type Grant and Cooperative Agreement Awards to Nonprofit and Governmental Entities

PART 1126–1140—[RESERVED]

■ 7. Subchapter E to chapter XI, consisting of parts 1141 through 1155, is added and reserved to read as follows:

Subchapter E—[RESERVED]

PART 1141–1155—[RESERVED]

■ 8. Subchapter F to chapter XI, consisting of parts 1156 through 1170, is added and reserved to read as follows:

Subchapter F—[RESERVED]

PART 1156–1170—[RESERVED]

■ 9. Subchapter G to chapter XI, consisting of parts 1171 through 1199, is added and reserved to read as follows:

Subchapter G—[RESERVED]

PART 1171–1199—[RESERVED]

Dated: October 19, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–25702 Filed 11–4–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

2 CFR Part 1108

[DOD–2016–OS–0051]

RIN 0790–AJ46

Definitions for DoD Grant and Agreement Regulations in Subchapters A Through F

AGENCY: Office of the Secretary, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: This Notice of Proposed Rulemaking (NPRM) is the fifth of a sequence of six NPRMs in this section of this issue of the **Federal Register** that propose updates to the DoD Grant and Agreement Regulations (DoDGARs). In this NPRM, DoD is proposing definitions of terms that are common to most portions of those regulations, as well as a central location for the definitions.

DATES: To ensure that they can be considered in developing the final rule, comments must be received at either the Web site or mailing address indicated below by February 6, 2017.

ADDRESSES: You may submit comments identified by docket number, or by Regulatory Information Number (RIN) and title, by either of the following methods:

The Web site: http://www.regulations.gov. Follow the instructions at that site for submitting comments.

Mail: Department of Defense, Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, ATTN: Box 24, Alexandria, VA 22350–1700.

Instructions: All submissions must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from the public is to make the submissions available for public viewing on the Internet at *http://www.regulations.gov* without change (*i.e.,* as they are received, including any personal identifiers or contact information).

FOR FURTHER INFORMATION CONTACT: Wade Wargo, Basic Research Office, telephone 571–372–2941.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of the Regulatory Action

1. The Need for the Regulatory Action and How the Action Meets That Need

The Department of Defense Grant and Agreement Regulations (DoDGARs) need to be updated, in part due to the issuance of new Office of Management and Budget guidance to Federal agencies on administrative requirements, cost principles, and audit requirements that apply to Federal grants, cooperative agreements, and other assistance instruments (2 CFR part 200). The DoDGARs part proposed by this NPRM is an important part of the update in that it contains the definitions of terms used throughout most portions of the DoDGARs.

2. Legal Authorities for the Regulatory Action

There are two statutory authorities for this NPRM:

- 10 U.S.C. 113, which establishes the Secretary of Defense as the head of the Department of Defense; and
- 5 U.S.C. 301, which authorizes the head of an Executive department to prescribe regulations for the governance of that department and the performance of its business.

B. Summary of the Major Provisions of the Regulatory Action

This NPRM proposes a new part, 2 CFR part 1108, as the central location for definitions of terms that are needed in order to make the DoDGARs as clear as possible for DoD awarding and administering officials, recipients, auditors, and others who may need to use them. The following subsection B.1 of this **SUPPLEMENTARY INFORMATION** section explains why the proposed part 1108 does not include definitions of some terms. Subsections B.2 through B.8 provide additional information about selected definitions that are included in the proposed part.

1. Terms Defined in Other Issuances That the DoDGARs Adopt by Reference

The proposed part 1108 does not reiterate the definition of a term that is defined in a statute, regulation, Governmentwide guidance document, or other issuance that the DoDGARs adopt by reference unless the DoDGARs also directly use that term and its definition is important to the interpretation of the regulations. Sections 1108.2 and 1108.3 of the proposed part 1108 provide more explanation and examples of issuances the DoDGARs adopt by reference, including national policy requirements, the cost principles and single audit

requirements in Subparts E and F of 2 CFR part 200, and the cost principles in the Federal Acquisition Regulation (48 CFR part 31).

2. Terms for Funding Instruments and Associated Business Relationships

The proposed part 1108 includes definitions of some terms intended to help clarify the distinctions between types of funding instruments that DoD Components and recipients may use, as well as the business relationships for which those instruments appropriately are used. The part also has an appendix with additional background information on assistance and acquisition, which are different purposes for which DoD Components enter into transactions such as grants, cooperative agreements, and procurement contracts. Among the terms addressed in the definitions and appendix are:

• ''Acquire'' and the related terms ''acquisition'' and ''acquisition cost.'' The definition of ''acquire'' in section 1108.10 of the proposed part clarifies the very important distinction between a DoD Component's action at the primary tier and transactions by recipients and subrecipients at lower tiers. It also clarifies that the ways in which a recipient or subrecipient may acquire property under a DoD Component's award include construction, fabrication, or development of the property, as well as donation of the property to the project or program under the award. The definition of ''acquisition cost'' similarly clarifies what the term includes in conjunction with equipment that a recipient or subrecipient constructs or fabricates under an award, which parallels the wording in the definition of ''acquisition cost'' in 2 CFR part 200 concerning software that a recipient or subrecipient develops under an award.

• ''Procurement contract,'' as distinct from ''procurement transaction'' or ''contract.'' The proposed part defines the term ''procurement contract'' specifically to mean a DoD Component's acquisition transaction because a few portions of the DoDGARs refer to DoD Component's procurement contracts (*e.g.,* in addressing the appropriate use of a grant or cooperative agreement, rather than a procurement contract). The part then defines the different term ''procurement transaction'' or ''contract'' to mean the funding instrument a recipient or subrecipient uses to buy goods or services it needs to carry out the program under its award or subaward. This distinction is important because the DoD Component's use of acquisition transactions is governed by the Federal Grant and Cooperative Agreement Act (31 U.S.C., chapter 63), while a recipient's or subrecipient's acquisition transactions are not subject to that statute.

• ''Cost-type contract,'' ''cost-type subaward,'' and ''fixed-amount subaward,'' which are terms for types of transactions into which a recipient or subrecipient would enter with an entity at the next lower tier. These terms are used in the administrative requirements portion of the general terms and conditions, which are in DoDGARs parts proposed in the third of the sequence of six NPRMs in this section of this issue of the **Federal Register**.

3. Terms To Distinguish DoD Entities, Officials, and Programs

There are a number of terms defined in the proposed part 1108 that are needed in order for the regulations to be able to specify different requirements for:

• DoD offices and officials with distinct responsibilities. ''Agreements officer,'' for example, is a term associated with officials authorized to award Technology Investment Agreements, as distinct from officials authorized to award or do post-award administration for grants and cooperative agreements. For the same reason, the proposed part 1108 defines ''DoD Components,'' ''award administration office,'' and ''contracting activity'' as organizational entities; ''agreements officer,'' ''contracting officer,'' and ''grants officer'' as categories of DoD officials; and ''Technology Investment Agreement'' as a type of funding instrument.''

• One or more subcategories of ''research and development (R&D),'' a term defined in the OMB guidance in 2 CFR part 200. To make the distinctions, the proposed part 1108 separately defines ''basic research,'' ''applied research,'' ''advanced research,'' ''research,'' and ''development.''

4. The Terms ''Principal Investigator'' and ''Co-Principal Investigator''

The proposed part 1108 includes definitions of ''principal investigator'' and ''co-principal investigator'' that are based on work done by an interagency group under the National Science and Technology Council and published in the **Federal Register** (72 FR 54257, September 24, 2007). The term ''principal investigator'' is used in multiple DoDGARs parts. The definition of the term ''co-principal investigator'' not only helps to complete the concept of ''principal investigator'' but also will be needed for a portion of the DoDGARs that DoD will propose for comment in the future.

5. The Term ''Approved Budget''

The definition of the term ''approved budget'' is included in the proposed part 1108 as the DoD implementation of the term ''budget'' defined in the OMB guidance in 2 CFR part 200. The definition in the OMB guidance indicates that an agency may, at its option, include the non-Federal share of project costs in the budget for a project. The definition in the proposed part 1108 clarifies that the ''approved budget'' for a DoD award includes any cost sharing or matching that the award requires.

6. The Term ''Exempt Property''

The proposed part 1108 defines the term ''exempt property'' to mean tangible personal property acquired under a DoD award for which a DoD Component has, and elects to use, statutory authority to vest title to the property in the recipient either unconditionally or subject to fewer conditions than usually apply.

7. The Term ''Small Award''

The proposed part 1108 includes a definition of the term ''small award'' to mean an award or subaward with a total value that does not exceed the simplified acquisition threshold. The term is defined because the proposed DoDGARs part 1126 (2 CFR part 1126, which is proposed in the third of the sequence of six NPRMs in this section of this issue of the **Federal Register**) authorizes DoD Components to include fewer requirements in ''small awards.''

8. The Term ''Unique Entity Identifier''

The proposed part 1108 includes a definition of the term ''unique entity identifier.'' One purpose of the definition is to clarify that the identifier currently is the Dun and Bradstreet Data Universal Numbering System, or DUNS, number.

C. Costs and Benefits

In providing a central source of definitions of terms used in the DoDGARs, this NPRM makes the regulations easier to use. It thereby may slightly reduce both burdens and costs for recipients and subrecipients, their auditors, DoD awarding and administering officials, and others who use the DoDGARs.

II. Invitation To Comment

DoD welcomes comments on all aspects of the proposed definitions—*e.g.,* if any of them could be made clearer or causes any perceived issues.

III. Regulatory Analysis

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

Executive Order 12866, as supplemented by Executive Order 13563, directs each Federal agency to: Propose regulations only after determining that benefits justify costs; tailor regulations to minimize burdens on society, consistent with achieving regulatory objectives; maximize net benefits when selecting among regulatory approaches; specify performance objectives, to the extent feasible, rather than the behavior or manner of compliance; and seek the views of those likely to be affected before issuing a notice of proposed rulemaking, where feasible and appropriate. The Department of Defense has determined that a central location for definitions of terms within the DoD Grant and Agreement Regulations will help maximize long-term benefits in relation to costs and burdens for recipients of DoD grant and cooperative agreement awards. This rule has been designated a ''significant regulatory action'' under section 3(f) of Executive Order 12866, although not an economically significant one. Accordingly, the rule has been reviewed by OMB.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) (2 U.S.C. 1532) requires that a Federal agency prepare a budgetary impact statement before issuing a rule that includes any Federal mandate that may result in the expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in 1995 dollars, updated annually for inflation. In 2015, that inflation-adjusted amount in current dollars is approximately $146 million. The Department of Defense has determined that this proposed regulatory action will not result in expenditures by State, local, and tribal governments, or by the private sector, of that amount or more in any one year.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires an agency that is proposing a rule to provide a regulatory flexibility analysis or to certify that the rule will not have a significant economic impact on a substantial number of small entities. The Department of Defense certifies that this proposed regulatory action will not have a significant economic impact on substantial number of small entities beyond any impact due to provisions of it that implement OMB guidance at 2 CFR part 200.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35; 5 CFR part 1320, Appendix A.1) (PRA), the Department of Defense has determined that there are no new collections of information contained in this proposed regulatory action.

Executive Order 13132, ''Federalism''

Executive Order 13132 establishes certain requirements that an agency must meet when it proposes a regulation that has Federalism implications. This proposed regulatory action does not have any Federalism implications.

List of Subjects in 2 CFR Part 1108

Accounting, Business and industry, Cooperative agreements, Grants administration, Hospitals, Indians, Nonprofit organizations, Reporting and recordkeeping requirements, Small business, State and local governments.

■ Accordingly, under the authority of 5 U.S.C. 301 and 10 U.S.C. 113, 2 CFR chapter XI, subchapter A, is proposed to be amended by adding part 1108 to read as follows:

PART 1108—DEFINITIONS OF TERMS USED IN SUBCHAPTERS A THROUGH F OF THIS CHAPTER

Subpart A—General

Sec.
1108.1 Purpose of this part.
1108.2 Precedence of definitions of terms in national policy requirements.
1108.3 Definitions of terms used in the Governmentwide cost principles or single audit requirements.
1108.4 Definitions of terms that vary depending on context.

Subpart B—Definitions

1108.10 Acquire.
1108.15 Acquisition.
1108.20 Acquisition cost.
1108.25 Administrative offset.
1108.30 Advance payment.
1108.35 Advanced research.
1108.40 Agreements officer.
1108.45 Applied research.
1108.50 Approved budget.
1108.55 Assistance.
1108.60 Award.
1108.65 Award administration office.
1108.70 Basic research.
1108.75 Capital asset.
1108.80 Claim.
1108.85 Cognizant agency for indirect costs.
1108.90 Contract.
1108.95 Contracting activity.
1108.100 Contracting officer.
1108.105 Contractor.
1108.110 Cooperative agreement.
1108.115 Co-principal investigator.
1108.120 Cost allocation plan.
1108.125 Cost sharing or matching.
1108.130 Cost-type contract.
1108.135 Cost-type subaward.
1108.140 Debarment.
1108.145 Debt.
1108.150 Delinquent debt.
1108.155 Development.
1108.160 Direct costs.
1108.165 DoD Components.
1108.170 Equipment.
1108.175 Exempt property.
1108.180 Expenditures.
1108.185 Federal interest.
1108.190 Federal share.
1108.195 Fixed-amount award.
1108.200 Fixed-amount subaward.
1108.205 Foreign organization.
1108.210 Foreign public entity.
1108.215 Grant.
1108.220 Grants officer.
1108.225 Indian tribe.
1108.230 Indirect costs (also known as ''Facilities and Administrative,'' or F&A, costs).
1108.235 Institution of higher education.
1108.240 Intangible property.
1108.245 Local government.
1108.250 Management decision.
1108.255 Nonprocurement instrument.
1108.260 Nonprofit organization.
1108.265 Obligation.
1108.270 Office of Management and Budget.
1108.275 Outlays.
1108.280 Participant support costs.
1108.285 Period of performance.
1108.290 Personal property.
1108.295 Principal investigator.
1108.300 Procurement contract.
1108.305 Procurement transaction.
1108.310 Program income.
1108.315 Project costs.
1108.320 Property.
1108.325 Real property.
1108.330 Recipient.
1108.335 Research.
1108.340 Simplified acquisition threshold.
1108.345 Small award.
1108.350 State.
1108.355 Subaward.
1108.360 Subrecipient.
1108.365 Supplies.
1108.370 Suspension.
1108.375 Technology investment agreement.
1108.380 Termination.
1108.385 Third-party in-kind contribution.
1108.390 Total value.
1108.395 Unique entity identifier.
1108.400 Unobligated balance.
1108.405 Voluntary (committed or uncommitted) cost sharing.
1108.410 Working capital advance.
Appendix A to Part 1108—Background on assistance, acquisition, and terms for types of awards

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

Subpart A—General

§ 1108.1 Purpose of this part.

(a) This part provides:

(1) Definitions of terms used in subchapters A through F of this chapter; and

(2) Background information as context for understanding terms related to assistance and acquisition purposes, awards that DoD Components make at the prime tier, and lower-tier transactions into which recipients and subrecipients enter when carrying out programs at lower tiers under DoD prime awards.

(b) This part is, for DoD, the regulatory implementation of OMB guidance in Subpart A of 2 CFR part 200.

§ 1108.2 Precedence of definitions of terms in national policy requirements.

(a) *General.* Some portions of the DoD Grant and Agreement Regulations (DoDGARs) may use a term in relation to compliance with a national policy requirement in a statute, Executive order, or other source that defines the term differently than it is defined in Subpart B of this part. For purposes of that particular national policy requirement, the definition of a term provided by the source of the requirement and any regulation specifically implementing it takes precedence over the definition in Subpart B of this part. Using the definition of a term that takes precedence for each national policy requirement is therefore important when determining the applicability and effect of that requirement on DoD grants and cooperative agreements subject to the DoDGARs.

(b) *Examples.* (1) Current portions of the DoDGARs that specifically implement national policy requirements, as described in paragraph (a) of this section, are:

(i) A Governmentwide regulation currently codified by DoD at 32 CFR part 26, which implements the Drug-Free Workplace Act of 1988 as it applies to grants (41 U.S.C. chapter 81, as amended);

(ii) A Government regulation currently codified by DoD at 32 CFR part 28, which implements restrictions on lobbying in 31 U.S.C. 1352;

(iii) A DoD regulation at part 1125 of this chapter, which implements Governmentwide guidance on nonprocurement debarment and suspension (2 CFR part 180) that has bases both in statute (section 2455 of Pub. L. 103–355, 108 Stat. 3327) and in Executive orders 12549 and 12689; and

(iv) Part 1122 of this chapter, which provides standard wording of terms and conditions related to a number of national policy requirements.

(2) To illustrate that a term may be defined differently in conjunction with specific national policy requirements than it is in this part, the term ''State'' as defined in the drug-free workplace requirements (32 CFR part 26) is identical neither to the definition in the lobbying restrictions (32 CFR part 28) nor to the definition in Subpart B of this part.

§ 1108.3 Definitions of terms used in the Governmentwide cost principles or single audit requirements.

(a) This part includes the definition of a term used in the following issuances only if the DoDGARs uses that term directly:

(1) The Single Audit Act requirements for audits of recipients and subrecipients that are in subpart F of OMB guidance in 2 CFR part 200;

(2) The Governmentwide cost principles for institutions of higher education, nonprofit entities, States, local governments, and Indian tribes that are contained in subpart E of OMB guidance in 2 CFR part 200; and

(3) The cost principles for for profit entities at subpart 31.2 of the Federal Acquisition Regulation (FAR) at 48 CFR part 31, as supplemented by provisions of the Defense Federal Acquisition Regulation Supplement at subpart 231.2 of 48 CFR part 231.

(b) For any terms not covered by paragraph (a), a user of the DoDGARs should consult definitions in:

(1) Subpart A of the OMB guidance in 2 CFR part 200 for terms used in Subparts E and F of that part; and

(2) FAR part 2 (48 CFR part 2) for terms used in the cost principles at 48 CFR part 31.

§ 1108.4 Definitions of terms that vary depending on context.

DoDGARs definitions of some terms related to types of awards (*e.g.,* ''contract'') and purposes for which they are used (*e.g.,* ''procurement'' or ''acquisition'') may vary, depending on the context. Appendix A to this part provides additional information about those terms and their definitions.

Subpart B—Definitions

§ 1108.10 Acquire.

Acquire means to:

(a) When the term is used in connection with a DoD Component action at the prime tier, obtain property or services by purchase, lease, or barter for the direct benefit or use of the United States Government.

(b) When the term is used in connection with a recipient action or a subrecipient action at a tier under a DoD Component's award:

(1) Purchase services;

(2) Obtain property under the award by:

(i) Purchase;

(ii) Construction;

(iii) Fabrication;

(iv) Development;

(v) The recipient or subrecipient entity's donation of the property to the project or program under the award to meet cost sharing or matching requirements (*i.e.,* including within the entity's share of the award's project costs the value of the remaining life of the property or its fair market value, rather than charging depreciation); or

(vi) Otherwise.

§ 1108.15 Acquisition.

Acquisition means the process of acquiring as described in:

(a) Paragraph (a) of § 1108.10 when used in connection with DoD Component actions at the prime tier.

(b) Paragraph (b) of § 1108.10 when used in connection with recipient or subrecipient actions at lower tiers under a DoD Component's award.

§ 1108.20 Acquisition cost.

Acquisition cost means the cost of an asset to a recipient or subrecipient, including the cost to ready the asset for its intended use.

(a) For example, when used in conjunction with:

(1) The purchase of equipment, the term means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired.

(2) Equipment that a recipient or subrecipient constructs or fabricates—or software that it develops—under an award, the term includes, when capitalized in accordance with generally accepted accounting principles (GAAP):

(i) The construction and fabrication costs of that equipment; and

(ii) The development costs of that software.

(b) Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation may be included in, or excluded from, the acquisition cost in accordance with the recipient's or subrecipient's regular accounting practices.

§ 1108.25 Administrative offset.

Administrative offset means an action whereby money payable by the United States Government to, or held by the Government for, a recipient is withheld to satisfy a delinquent debt the recipient owes the Government.

§ 1108.30 Advance payment.

Advance payment means a payment that DoD or a recipient or subrecipient makes by any appropriate payment mechanism, including a predetermined payment schedule, before the recipient or subrecipient disburses the funds for project or program purposes.

§ 1108.35 Advanced research.

Advanced research means advanced technology development that creates new technology or demonstrates the viability of applying existing technology to new products and processes in a general way. Advanced research is most closely analogous to precompetitive technology development in the commercial sector (*i.e.,* early phases of research and development on which commercial competitors are willing to collaborate, because the work is not so coupled to specific products and processes that the results of the work must be proprietary). It does not include development of military systems and hardware where specific requirements have been defined. It is typically funded in Advanced Technology Development (Budget Activity 3) programs within DoD's Research, Development, Test and Evaluation (RDT&E) appropriations.

§ 1108.40 Agreements officer.

Agreements officer means a DoD official with the authority to enter into, administer, and/or terminate Technology Investment Agreements.

§ 1108.45 Applied research.

Applied research means efforts that attempt to determine and exploit the potential of scientific discoveries or improvements in technology, such as new materials, devices, methods and processes. It typically is funded in Applied Research (Budget Activity 2) programs within DoD's Research, Development, Test and Evaluation (RDT&E) appropriations. Applied research often follows basic research but may not be fully distinguishable from the related basic research. The term does not include efforts whose principal aim is the design, development, or testing of specific products, systems or processes to be considered for sale or acquisition, efforts that are within the definition of ''development.''

§ 1108.50 Approved budget.

Approved budget means, in conjunction with a DoD Component award to a recipient, the most recent version of the budget the recipient submitted and the DoD Component approved (either at the time of the initial award or subsequently), to summarize planned expenditures for the project or program under the award. It includes:

(a) All Federal funding made available to the recipient under the award to use for project or program purposes.

(b) Any cost sharing or matching that the recipient is required to provide under the award.

(c) Any options that have been exercised but not any options that have not yet been exercised.

§ 1108.55 Assistance.

Assistance means the transfer of a thing of value to a recipient to carry out a public purpose of support or stimulation authorized by a law of the United States (see 31 U.S.C. 6101(3)). Grants, cooperative agreements, and technology investment agreements are examples of legal instruments that DoD Components use to provide assistance.

§ 1108.60 Award.

Award means a grant, cooperative agreement, technology investment agreement, or other nonprocurement instrument subject to one or more parts of the DoDGARs. Within each part of the regulations, the term includes only the types of instruments subject to that part.

§ 1108.65 Award administration office.

Award administration office means a DoD Component office that performs assigned post-award functions related to the administration of grants, cooperative agreements, technology investment agreements, or other nonprocurement instruments subject to one or more parts of the DoDGARs.

§ 1108.70 Basic research.

Basic research means efforts directed toward increasing knowledge and understanding in science and engineering, rather than the practical application of that knowledge and understanding. It typically is funded within Basic Research (Budget Activity 1) programs within DoD's Research, Development, Test and Evaluation (RDT&E) appropriations. For the purposes of the DoDGARs, basic research includes:

(a) Research-related, science and engineering education and training, including graduate fellowships and research traineeships; and

(b) Research instrumentation and other activities designed to enhance the infrastructure for science and engineering research.

§ 1108.75 Capital asset.

Capital asset means a tangible or intangible asset used in operations having a useful life of more than one year which is capitalized in accordance with GAAP. Capital assets include:

(a) Land, buildings (facilities), equipment, and intellectual property (including software) whether acquired by purchase, construction, manufacture, lease-purchase, exchange, or through capital leases; and

(b) Additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations or alterations to capital assets that materially increase their value or useful life (not ordinary repairs and maintenance).

§ 1108.80 Claim.

Claim means a written demand or written assertion by one of the parties to an award seeking as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of award terms, or other relief arising under or relating to the award. A routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim by written notice to the grants officer if it is disputed either as to liability or amount, or is not acted upon in a reasonable time.

§ 1108.85 Cognizant agency for indirect costs.

Cognizant agency for indirect costs means the Federal agency responsible for reviewing, negotiating, and approving cost allocation plans and indirect cost proposals on behalf of all Federal agencies. The cognizant agency for indirect costs for a particular entity may be different than the cognizant agency for audit. The cognizant agency for indirect costs:

(a) For an institution of higher education, nonprofit organization, State, or local government is assigned as described in the appendices to OMB guidance in 2 CFR part 200. See 2 CFR 200.19 for specific citations to those appendices.

(b) For a for-profit entity, normally will be the agency with the largest dollar amount of pertinent business, as described in the Federal Acquisition Regulation at 48 CFR 42.003.

§ 1108.90 Contract.

Contract means a procurement transaction, as that term is defined in this subpart. A contract is a transaction into which a recipient or subrecipient enters. It is therefore distinct from the term ''procurement contract,'' which is a transaction that a DoD Component awards at the prime tier.

§ 1108.95 Contracting activity.

Contracting activity means an activity to which the Head of a DoD Component has delegated broad authority regarding

acquisition functions pursuant to 48 CFR 1.601.

§ 1108.100 Contracting officer.

Contracting officer means a DoD official with the authority to enter into, administer, and/or terminate procurement contracts and make related determinations and findings.

§ 1108.105 Contractor.

Contractor means an entity to which a recipient or subrecipient awards a procurement transaction (also known as a contract).

§ 1108.110 Cooperative agreement.

Cooperative agreement means a legal instrument which, consistent with 31 U.S.C. 6305, is used to enter into the same kind of relationship as a grant (see definition of ''grant'' in this subpart), except that substantial involvement is expected between the Department of Defense and the recipient when carrying out the activity contemplated by the cooperative agreement. The term does not include ''cooperative research and development agreements'' as defined in 15 U.S.C. 3710a.

§ 1108.115 Co-principal investigator.

Co-principal investigator means any one of a group of individuals whom an organization that is carrying out a research project with DoD support designates as sharing the authority and responsibility for leading and directing the research intellectually and logistically, other than the one among the group identified as the primary contact for scientific, technical, and related budgetary matters (see the definition of ''principal investigator'').''

§ 1108.120 Cost allocation plan.

Cost allocation plan means either a:

(a) Central service cost allocation plan, as defined at 2 CFR 200.9 and described in Appendix V to OMB guidance in 2 CFR part 200; or

(b) Public assistance cost allocation plan as described in Appendix VI to 2 CFR part 200.

§ 1108.125 Cost sharing or matching.

Cost sharing or matching means the portion of project costs not borne by the Federal Government, unless a Federal statute authorizes use of any Federal funds for cost sharing or matching.

§ 1108.130 Cost-type contract.

Cost-type contract means a procurement transaction awarded by a recipient or a subrecipient at any tier under a DoD Component's grant or cooperative agreement that provides for the contractor to be paid on the basis of the actual, allowable costs it incurs (plus any fee or profit for which the contract provides).

§ 1108.135 Cost-type subaward.

Cost-type subaward means a subaward that:

(a) A recipient or subrecipient makes to another entity at the next lower tier; and

(b) Provides for payments to the entity that receives the cost-type subaward based on the actual, allowable costs it incurs in carrying out the subaward.

§ 1108.140 Debarment.

Debarment means an action taken by a Federal agency debarring official to exclude a person or entity from participating in covered Federal transactions, in accordance with debarment and suspension policies and procedures for:

(a) Nonprocurement instruments, which are in OMB guidance at 2 CFR part 180, as implemented by the DoD at 2 CFR part 1125; or

(b) Procurement contracts, which are in the Federal Acquisition Regulation at 48 CFR 9.4.

§ 1108.145 Debt.

Debt means any amount of money or any property owed to a Federal agency by any person, organization, or entity except another United States Federal agency. Debts include any amounts due from insured or guaranteed loans, fees, leases, rents, royalties, services, sales of real or personal property, or overpayments, penalties, damages, interest, fines and forfeitures, and all other claims and similar sources. For the purposes of this chapter, amounts due a non-appropriated fund instrumentality are not debts owed the United States.

§ 1108.150 Delinquent debt.

Delinquent debt means a debt:

(a) That the debtor fails to pay by the date specified in the initial written notice from the agency owed the debt, normally within 30 calendar days, unless the debtor makes satisfactory payment arrangements with the agency by that date; and

(b) With respect to which the debtor has elected not to exercise any available appeals or has exhausted all agency appeal processes.

§ 1108.155 Development.

Development means, when used in the context of ''research and development,'' the systematic use of scientific and technical knowledge in the design, development, testing, or evaluation of potential new products, processes, or services to meet specific performance requirements or objectives. It includes the functions of design engineering, prototyping, and engineering testing. It typically is funded within programs in Budget Activities 4 through 7 of DoD's Research, Development, Test and Evaluation (RDT&E) appropriations.

§ 1108.160 Direct costs.

Direct costs means any costs that are identified specifically with a particular final cost objective, such as an award, in accordance with the applicable cost principles.

§ 1108.165 DoD Components.

DoD Components means the Office of the Secretary of Defense; the Military Departments; the National Guard Bureau (NGB); and all Defense Agencies, DoD Field Activities, and other organizational entities within the DoD that are authorized to award or administer grants, cooperative agreements, and other non-procurement instruments subject to the DoDGARs.

§ 1108.170 Equipment.

Equipment means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of:

(a) $5,000; or

(b) The recipient's or subrecipient's capitalization threshold for financial statement purposes.

§ 1108.175 Exempt property.

(a) *Exempt property* means tangible personal property acquired in whole or in part with Federal funds under a DoD Component's awards, for which the DoD Component:

(1) Has statutory authority to vest title in recipients (or allow for vesting in subrecipients) without further obligation to the Federal Government or subject to conditions the DoD Component considers appropriate; and

(2) Elects to use that authority to do so.

(b) An example of exempt property authority is contained in the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6306) for tangible personal property acquired under an award to conduct basic or applied research by a nonprofit institution of higher education or nonprofit organization whose primary purpose is conducting scientific research.

§ 1108.180 Expenditures.

Expenditures mean charges made by a recipient or subrecipient to a project or program under an award.

(a) The charges may be reported on a cash or accrual basis, as long as the

methodology is disclosed and is consistently applied.

(b) For reports prepared on a cash basis, expenditures are the sum of:

(1) Cash disbursements for direct charges for property and services;

(2) The amount of indirect expense charged;

(3) The value of third-party in-kind contributions applied; and

(4) The amount of cash advance payments and payments made to subrecipients.

(c) For reports prepared on an accrual basis, expenditures are the sum of:

(1) Cash disbursements for direct charges for property and services;

(2) The amount of indirect expense incurred;

(3) The value of third-party in-kind contributions applied; and

(4) The net increase or decrease in the amounts owed by the recipient or subrecipient for:

(i) Goods and other property received;

(ii) Services performed by employees, contractors, subrecipients, and other payees; and

(iii) Programs for which no current services or performance are required, such as annuities, insurance claims, or other benefit payments.

§ 1108.185 Federal interest.

Federal interest means, in relation to real property, equipment, or supplies acquired or improved under an award or subaward, the dollar amount that is the product of the:

(a) Federal share of total project costs; and

(b) Current fair market value of the property, improvements, or both, to the extent the costs of acquiring or improving the property were included as project costs.

§ 1108.190 Federal share.

Federal share means the portion of the project costs under an award that is paid by Federal funds.

§ 1108.195 Fixed-amount award.

Fixed-amount award means a DoD Component grant or cooperative agreement that provides for the recipient to be paid on the basis of performance and results, rather than the actual, allowable costs the recipient incurs.

§ 1108.200 Fixed-amount subaward.

Fixed-amount subaward means a subaward:

(a) That a recipient or subrecipient makes to another entity at the next lower tier; and

(b) Under which the total amount to be paid to the other entity is based on performance and results, and not on the actual, allowable costs that entity incurs.

§ 1108.205 Foreign organization.

Foreign organization means an entity that is:

(a) A public or private organization that is located in a country other than the United States and its territories and is subject to the laws of the country in which it is located, irrespective of the citizenship of project staff or place of performance;

(b) A private nongovernmental organization located in a country other than the United States and its territories that solicits and receives cash contributions from the general public;

(c) A charitable organization located in a country other than the United States and its territories that is nonprofit and tax exempt under the laws of its country of domicile and operation, and is not a university, college, accredited degree-granting institution of education, private foundation, hospital, organization engaged exclusively in research or scientific activities, church, synagogue, mosque or other similar entity organized primarily for religious purposes; or

(d) An organization located in a country other than the United States and its territories that is not recognized as a foreign public entity.

§ 1108.210 Foreign public entity.

Foreign public entity means:

(a) A foreign government or foreign governmental entity;

(b) A public international organization, which is an organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (22 U.S.C. 288–288f);

(c) An entity owned (in whole or in part) or controlled by a foreign government; or

(d) Any other entity consisting wholly or partially of one or more foreign governments or foreign governmental entities.

§ 1108.215 Grant.

Grant means a legal instrument which, consistent with 31 U.S.C. 6304, is used to enter into a relationship:

(a) Of which the principal purpose is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by a law of the United States, rather than to acquire property or services for the DoD's direct benefit or use.

(b) In which substantial involvement is not expected between the Department of Defense and the recipient when carrying out the activity contemplated by the grant.

§ 1108.220 Grants officer.

Grants officer means a DoD official with the authority to enter into, administer, and/or terminate grants or cooperative agreements.

§ 1108.225 Indian tribe.

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. Chapter 33), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians (25 U.S.C. 450b(e)). See the annually published Bureau of Indian Affairs list of Indian Entities Recognized and Eligible to Receive Services.

§ 1108.230 Indirect costs (also known as "Facilities and Administrative," or F&A, costs).

Indirect costs means those costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved.

§ 1108.235 Institution of higher education.

Institution of higher education has the meaning specified at 20 U.S.C. 1001.

§ 1108.240 Intangible property.

Intangible property means:

(a) Property having no physical existence, such as trademarks, copyrights, patents and patent applications; and

(b) Property such as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership, whether the property is considered tangible or intangible.

§ 1108.245 Local government.

Local government means any unit of government within a State, including a:

(a) County;

(b) Borough;

(c) Municipality;

(d) City;

(e) Town;

(f) Township;

(g) Parish;

(h) Local public authority, including any public housing agency under the United States Housing Act of 1937;

(i) Special district;

(j) School district;

(k) Intrastate district;

(l) Council of governments, whether or not incorporated as a nonprofit corporation under State law; and

(m) Any other agency or instrumentality of a multi-, regional, or intra-state or local government.

§ 1108.250 Management decision.

Management decision means a written decision issued to an audited entity by a DoD Component, another Federal agency that has audit or indirect cost cognizance or oversight responsibilities for the audited entity, or a recipient or subrecipient from which the audited entity received an award or subaward. The DoD Component, cognizant or oversight agency, recipient, or subrecipient issues the management decision to specify the corrective actions that are necessary after evaluating the audit findings and the audited entity's corrective action plan.

§ 1108.255 Nonprocurement instrument.

Nonprocurement instrument means a legal instrument other than a procurement contract that a DoD Component may award. Examples include an instrument of financial assistance, such as a grant or cooperative agreement, or an instrument of technical assistance, which provides services in lieu of money.

§ 1108.260 Nonprofit organization.

Nonprofit organization means any corporation, trust, association, cooperative, or other organization, not including an institution of higher education, that:

(a) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;

(b) Is not organized primarily for profit; and

(c) Uses net proceeds to maintain, improve, or expand the operations of the organization.

§ 1108.265 Obligation.

Obligation means:

(a) When used in conjunction with a DoD Component's action, a legally binding agreement that will result in outlays, either immediately or in the future. Examples of actions through which a DoD Component incurs an obligation include the signature of a grant, cooperative agreement, or technology investment agreement authorizing the recipient to use funds under the award.

(b) When used in conjunction with a recipient's or subrecipient's use of funds under an award or subaward, an order placed for property and services, a contract or subaward made, or a similar transaction during a given period that requires payment during the same or a future period.

§ 1108.270 Office of Management and Budget.

Office of Management and Budget means the Executive Office of the President, United States Office of Management and Budget.

§ 1108.275 Outlays.

Outlays means ''expenditures,'' as defined in this subpart.

§ 1108.280 Participant support costs.

Participant support costs means direct costs for items such as stipends or subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with conferences, or training projects.

§ 1108.285 Period of performance.

Period of performance means the time during which a recipient or subrecipient may incur new obligations to carry out the work authorized under an award or subaward, respectively.

§ 1108.290 Personal property.

Personal property means property other than real property. It may be tangible, having physical existence, or intangible, such as copyrights, patents, and securities.

§ 1108.295 Principal investigator.

Principal investigator means either:

(a) The single individual whom an organization that is carrying out a research project with DoD support designates as having an appropriate level of authority and responsibility for leading and directing the research intellectually and logistically, which includes the proper conduct of the research, the appropriate use of funds, and administrative requirements such as the submission of scientific progress reports to the DoD program office; or

(b) If the organization designates more than one individual as sharing that authority and responsibility, the individual within that group identified by the organization as the one with whom the DoD Component's program manager generally should communicate as the primary contact for scientific, technical, and related budgetary matters concerning the project (others within the group are ''co-principal investigators,'' as defined in this subpart).

§ 1108.300 Procurement contract.

Procurement contract means a legal instrument which, consistent with 31 U.S.C. 6303, reflects a relationship between the Federal Government and a State, a local government, or other recipient when the principal purpose of the instrument is to acquire property or services for the direct benefit or use of the Federal Government. A procurement contract is a prime tier transaction and therefore distinct from a recipient's or subrecipient's ''procurement transaction'' or ''contract'' as defined in this subpart.

§ 1108.305 Procurement transaction.

Procurement transaction means a legal instrument by which a recipient or subrecipient purchases property or services it needs to carry out the project or program under its prime award or subaward, respectively. A procurement transaction is distinct both from ''subaward'' and ''procurement contract,'' as those terms are defined in this subpart.

§ 1108.310 Program income.

Program income means gross income earned by a recipient or subrecipient that is directly generated by a supported activity or earned as a result of an award or subaward (during the period of performance unless the award or subaward specifies continuing requirements concerning disposition of program income after the end of that period).

(a) Program income includes, but is not limited to, income from:

(1) Fees for services performed;

(2) The use or rental of real or personal property for which the recipient or subrecipient is accountable under the award or subaward (whether acquired under the award or subaward, or other Federal awards from which accountability for the property was transferred);

(3) The sale of commodities or items fabricated under the award or subaward;

(4) License fees and royalties on patents and copyrights; and

(5) Payments of principal and interest on loans made with award or subaward funds.

(b) Program income does not include:

(1) Interest earned on advances of Federal funds;

(2) Proceeds from the sale of real property or equipment under the award; or

(3) Unless otherwise specified in Federal statute or regulation, or the terms and conditions of the award or subaward:

(i) Rebates, credits, discounts, and interest earned on any of them; or

(ii) Governmental revenues, taxes, special assessments, levies, fines, and similar revenues raised by the recipient or subrecipient.

§ 1108.315 Project costs.

Project costs means the total of:

(a) Allowable costs incurred under an award by the recipient, including costs of any subawards and contracts under the award; and

(b) Cost sharing or matching contributions that are required under the award, which includes voluntary committed (but not voluntary uncommitted) contributions and the value of any third-party in-kind contributions.

§ 1108.320 Property.

Property means real property and personal property (equipment, supplies, intangible property, and debt instruments), unless stated otherwise.

§ 1108.325 Real property.

Real property means land, including land improvements, structures and appurtenances thereto, but excluding moveable machinery and equipment.

§ 1108.330 Recipient.

Recipient means an entity that receives an award directly from a DoD Component. The term does not include subrecipients.

§ 1108.335 Research.

Research means basic, applied, and advanced research.

§ 1108.340 Simplified acquisition threshold.

Simplified acquisition threshold means the dollar amount set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1, which is adjusted periodically for inflation in accordance with 41 U.S.C. 1908.

§ 1108.345 Small award.

Small award means a DoD grant or cooperative agreement or a subaward with a total value over the life of the award that does not exceed the simplified acquisition threshold.

§ 1108.350 State.

State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any agency or instrumentality thereof exclusive of local governments.

§ 1108.355 Subaward.

Subaward means a legal instrument by which a recipient or subrecipient at any tier below a DoD Component prime award, transfers—for performance by an entity at the next lower tier—a portion of the substantive program for which the DoD Component's prime award provided financial assistance.

§ 1108.360 Subrecipient.

Subrecipient means an entity that receives a subaward.

§ 1108.365 Supplies.

Supplies means all tangible personal property, including a computing device, acquired under an award that does not meet the definition of equipment in this subpart.

§ 1108.370 Suspension.

Suspension means either:

(a) When used in the context of a specific award or subaward to an entity, the temporary withdrawal of authority for that entity to obligate funds under the award or subaward, pending its taking corrective action or a decision to terminate the award or subaward.

(b) When used in the context of an entity, an action by a DoD Component's suspending official under 2 CFR part 1125, DoD's regulation implementing OMB guidance on nonprocurement debarment and suspension in 2 CFR part 180, to immediately exclude the entity from participating in covered Federal Government transactions, pending completion of an investigation and any legal or debarment proceedings that ensue.

§ 1108.375 Technology investment agreement.

Technology investment agreement means one of a special class of assistance instruments used to increase involvement of commercial firms in defense research programs and for other purposes related to integration of the commercial and defense sectors of the nation's technology and industrial base. Technology investment agreements include one kind of cooperative agreement with provisions tailored for involving commercial firms, as well as one kind of assistance transaction other than a grant or cooperative agreement. Technology investment agreements are subject to, and described more fully in, 32 CFR part 37.

§ 1108.380 Termination.

Termination means the ending of an award or subaward, in whole or in part, at any time prior to the planned end of period of performance.

§ 1108.385 Third-party in-kind contribution.

Third-party in-kind contribution means the value of a non-cash contribution (*i.e.,* property or services) that:

(a) A non-Federal third party contributes, without charge, either to a recipient or subrecipient at any tier under a DoD Component's award; and

(b) Is identified, and included in the approved budget of the DoD Component's award, as a contribution being used toward meeting the award's cost sharing or matching requirements (which includes voluntary committed, but not voluntary uncommitted, contributions).

§ 1108.390 Total value.

Total value of a DoD grant, cooperative agreement, or TIA means the total amount of costs that are currently expected to be charged to the award over its life, which includes amounts for:

(a) The Federal share and any non-Federal cost sharing or matching required under the award; and

(b) Any options, even if not yet exercised, for which the costs have been established in the award.

§ 1108.395 Unique entity identifier.

Unique entity identifier means the identifier required for System for Award Management registration to uniquely identify entities with which the Federal Government does business (currently the Dun and Bradstreet Data Universal Numbering System, or DUNS, number).

§ 1108.400 Unobligated balance.

Unobligated balance means the amount of funds under an award or subaward that the recipient or subrecipient has not obligated. The amount is computed by subtracting the cumulative amount of the recipient's or subrecipient's unliquidated obligations and expenditures of funds from the cumulative amount of funds that it was authorized to obligate under the award or subaward.

§ 1108.405 Voluntary (committed or uncommitted) cost sharing.

(a) *Voluntary cost sharing* means cost sharing that an entity pledges voluntarily in its application or proposal (*i.e.,* not due to a stated cost sharing requirement in the program announcement to which the entity's application or proposal responds).

(b) *Voluntary committed cost sharing* means voluntary cost sharing that a DoD Component accepts through inclusion in the approved budget for the project or program and as a binding requirement of the terms and conditions of the award made to the entity in response to its application or proposal.

(c) *Voluntary uncommitted cost sharing* means voluntary cost sharing that does not meet the criteria in paragraph (b) of this section.

§ 1108.410 Working capital advance.

Working capital advance means a payment method under which funds are

advanced to a recipient or subrecipient to cover its estimated disbursement needs for a given initial period, after which payment is made by way of reimbursement.

Appendix A to Part 1108—Background on Assistance, Acquisition, and Terms for Types of Awards

I. Purpose of This Appendix

This appendix provides background intended to help avoid confusion about some terms:

A. That are used in this chapter to describe either types of awards that DoD Components, recipients, and subrecipients make, or the purposes for which those types of awards are used; and

B. For which this part provides definitions that vary depending on the context within which the terms are used.

II. Why Definitions of Some Terms are Context-Dependent

A. The DoDGARs contain both:

1. Direction to DoD Components concerning their award of grants and cooperative agreements at the prime tier; and

2. Terms and conditions that DoD Components include in their grants and cooperative agreements to specify the Government's and recipients' rights and responsibilities, including post-award requirements with which recipients' actions must comply.

B. In some cases, the same defined term or two closely related terms are used in relation to both DoD Component actions at the prime tier and recipient or subrecipient actions at lower tiers under DoD Components' awards. But a given defined term may have meanings that differ at the two tiers. For example, in part because the Federal Grant and Cooperative Agreement Act applies to DoD Component actions at the prime tier but not to recipient or subrecipient actions at lower tiers (see sections III and IV of this appendix):

1. The terms ''acquire'' and ''acquisition'' do not have precisely the same meaning in conjunction with actions at the prime and lower tiers.

2. The meaning of the term ''procurement contract'' used to describe DoD Component prime-tier actions is not precisely the same as the meaning of ''procurement transaction'' or ''contract'' used to describe recipient or subrecipient actions at lower tiers.

III. Background: Distinguishing Prime-Tier Relationships and Awards

A. The Federal Grant and Cooperative Agreement Act (31 U.S.C. chapter 63) specifies that the type of award a DoD Component is to use when making a prime award to a recipient is based on the nature of the relationship between the DoD Component and the recipient that the prime award reflects.

B. Specifically, except where another statute authorizes DoD to do otherwise, 31 U.S.C. chapter 63 specifies use of:

1. A procurement contract as the instrument reflecting a relationship between a DoD Component and a recipient when the principal purpose of the relationship is to acquire property or services for the direct benefit or use of the Federal Government.

2. A grant or cooperative agreement as the instrument reflecting a relationship between those two parties when the principal purpose of the relationship is to carry out a public purpose of support or stimulation authorized by Federal statute.

C. The terms ''acquisition'' and ''assistance'' are defined in this part to correspond to the principal purposes described in paragraphs III.B.1 and 2 of this section, respectively. Using those terms, paragraphs III.B.1 and B.2 may be restated to say that grants and cooperative agreements are assistance instruments that DoD Components use at the prime tier for assistance purposes, as distinct from procurement contracts they use at that tier for acquisition.

IV. Background: Distinguishing Types of Recipients' and Subrecipients' Awards

A. While the Federal Grant and Cooperative Agreement Act applies to Federal agencies, it does not govern types of awards that recipients and subrecipients make, whether or not they are lower-tier awards under a Federal prime grant or cooperative agreement. That statute therefore does not require a recipient or subrecipient to:

1. Consider any award it makes at a lower tier under a Federal assistance award as a grant or cooperative agreement. Therefore, at its option, a recipient or subrecipient may consider all of its lower-tier awards to be ''contracts.''

2. Associate an ''assistance'' relationship, as that term is defined in this part and used in this chapter, with any lower-tier transaction that it makes.

B. However, the DoDGARs in this chapter do distinguish between two classes of lower-tier transactions that recipients and subrecipients make: Subawards and procurement transactions. The distinction promotes uniformity in requirements for lower-tier transactions under DoD grants and cooperative agreements. It is based on a long-standing distinction in OMB guidance to Federal agencies, currently at 2 CFR part 200, which DoD implements in this chapter.

C. The distinction between a subaward and procurement transaction is based on the primary purpose of that transaction.

1. The transaction is a subaward if a recipient or subrecipient enters into it with another entity at the next lower tier in order to transfer—for performance by that lower-tier entity—a portion of the substantive program for which the prime DoD grant or cooperative agreement provided financial assistance to the recipient. Because the Federal Grant and Cooperative Agreement Act does not apply to the recipient or subrecipient, it may make a subaward as defined in this part using an instrument that it considers a contract.

2. The transaction is a procurement transaction if the recipient or subrecipient enters into it in order to purchase goods or services from the lower-tier entity that the recipient or subrecipient needs to perform its portion of the substantive program supported by the prime DoD award.

Dated: October 19, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–25698 Filed 11–4–16; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

2 CFR Part 1120

[DOD–2016–OS–0052]

RIN 0790–AJ47

Format for DoD Grant and Cooperative Agreement Awards

AGENCY: Office of the Secretary, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: This notice of proposed rulemaking (NPRM) is the second of a sequence of six NPRM documents in this issue of the **Federal Register** that collectively establish for DoD grants and cooperative agreements an updated interim implementation of Governmentwide guidance on administrative requirements, cost principles, and audit requirements for Federal awards and make other needed updates to the DoD Grant and Agreement Regulations (DoDGARs). This NPRM adds a new DoDGARs part to establish a standard format for organizing the content of DoD Components' grant and cooperative agreement awards and modifications to them.

DATES: To ensure that they can be considered in developing the final rule, comments must be received at either the Web site or mailing address indicated below by February 6, 2017.

ADDRESSES: You may submit comments identified by docket number, or by Regulatory Information Number (RIN) and title, by either of the following methods:

The Web site: http://www.regulations.gov. Follow the instructions at that site for submitting comments.

Mail: Department of Defense, Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, ATTN: Box 24, Alexandria, VA 22350–1700.

Instructions: All submissions must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from the public is to make the submissions available for public viewing on the

Internet at *http://www.regulations.gov* without change (*i.e.,* as they are received, including any personal identifiers or contact information).

FOR FURTHER INFORMATION CONTACT: Wade Wargo, Basic Research Office, telephone 571–372–2941.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of the Regulatory Action

1. The Need for the Regulatory Action and How the Action Meets That Need

As explained in the **SUPPLEMENTARY INFORMATION** section of the NPRM immediately preceding this one in this issue of the **Federal Register**, this is one of six NPRMS that collectively make needed updates to the Department of Defense Grant and Agreement Regulations (DoDGARs). One purpose of the updating is to implement Office of Management and Budget (OMB) guidance to Federal agencies on administrative requirements, cost principles, and audit requirements applicable to Federal grants, cooperative agreements, and other assistance instruments (2 CFR part 200). Another purpose is to provide greater uniformity in the content and organization of DoD grants and cooperative agreements made by approximately 100 offices located throughout the nation and abroad.

The regulatory action in this NPRM contributes to the first of those purposes by implementing provisions of the OMB guidance on the minimum content that Federal agencies' awards must include. It also contributes to the second of those purposes by:

- Establishing additional requirements for uniform content, beyond the minimum identified in the guidance; and
- Specifying a standard format for organizing the content of DoD Component awards to all types of entities, including entities other than those addressed in the OMB guidance.

2. Legal Authorities for the Regulatory Action

There are two statutory authorities for this NPRM:

- 10 U.S.C. 113, which establishes the Secretary of Defense as the head of the Department of Defense; and
- 5 U.S.C. 301, which authorizes the head of an Executive department to prescribe regulations for the governance of that department and the performance of its business.

B. Summary of the Major Provisions of the Regulatory Action

The proposed part 1120 is organized into seven subparts, each of which addresses a major element or subelement of the standard award format that the part establishes. Those elements and subelements of the standard award format are the:

- Award cover pages (addressed in subpart A of the proposed part).
- Award-specific terms and conditions (addressed in subpart B).
- General terms and conditions (addressed in subpart C), the four subelements of which (addressed in subparts D through G) are the: (i) Preamble; (ii) administrative requirements; (iii) national policy requirements; and (iv) programmatic requirements.

Sections I.B.1 through I.B.7 of this **SUPPLEMENTARY INFORMATION** section describe these elements and subelements of the standard award format. Sections I.B.1 and I.B.2 describe the award cover pages and award-specific terms and conditions, respectively. Section I.B.3 describes the general terms and conditions as a whole and sections I.B.4 through 7 separately describe its four subelements.

1. Award Cover Pages (Division I of the Award)

Subpart A of the proposed part 1120 addresses the content of the award cover pages and their location in Division I of the award. The cover pages will contain basic information about the award or modification to the award, such as the name of the DoD awarding office and recipient, the award number, and amount. The cover pages list what else the award includes—such as the scope of work, any award-specific terms and conditions, and the general terms and conditions—and state where those other portions of the award are located. The cover pages will be signed by the DoD grants officer and, for a bilaterally executed award or modification, an official the recipient entity authorizes to sign on its behalf.

For grants and cooperative agreements to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes, Subpart A thereby implements OMB guidance in 2 CFR 200.210(a) on the general information contained in awards. The proposed Subpart A is broader than the OMB guidance in that it: (1) Specifies use of the format for awards to for-profit and other entities not addressed in the guidance; and (2) requires DoD Components' to include more information elements than the guidance specifies. The proposed Subpart A varies in three instances from the guidance by:

- Providing more detailed explanations of some of the information elements listed in § 200.210(a) of the OMB guidance, to help clarify exactly what information a DoD Component is to include—*e.g.,* in the case of each funding amount, whether it is the federal share, the non-federal share, or the sum of the two.
- Providing clarification related to the guidance in 2 CFR 200.210(a)(15) on the inclusion in each award of the recipient's indirect cost rate for the award. The proposed subpart A requires a DoD Component to include only the indirect cost rate that is in effect at the time of the initial award. The reason is to avoid unnecessary burdens and costs of having to update information on cover pages throughout the life of a multi-year award to a for-profit or other entity that has post-determined final indirect cost rates and rates that vary from one fiscal year to the next (note that a post-determined final rate for a recipient's fiscal year is set after the end of that fiscal year, based on actual costs).
- Excepting a DoD Component from the requirement to include the indirect cost rate on an award if the recipient of the award affirms that it treats its rate as proprietary information, as many for-profit and nonprofit entities do.

The proposed subpart A also provides for later development of a standard DoD form for the cover pages, by mandating use of the form when there is one. A standard form will make it easier for both recipients and DoD post-award administrators to locate basic information they need in different DoD awarding offices' awards.

2. Award-Specific Terms and Conditions (Division II of the Award)

Subpart B of the proposed 2 CFR part 1120 provides for DoD Components' inclusion of award-specific terms and conditions in Division II of their awards. Depending upon specific conditions pertinent to a particular award, an awarding office may need award-specific terms and conditions to supplement or supersede some of the general terms and conditions. The proposed Subpart B does not prescribe how to organize the content of the award-specific terms and conditions, nor does it specify standard wording for any of them. For grants and cooperative agreements to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes, the proposed Subpart B implements, without variation, OMB guidance in 2 CFR 200.210(c) as it applies to award-specific terms and conditions.

3. General Terms and Conditions (Division III of the Award)

Subpart C of the proposed part 1120 addresses the general terms and conditions as a whole and their location in Division III of the award. The subpart also provides for publicly posting the general terms and conditions, rather than providing them to each recipient with its award. Publicly posting them should make it easy for a potential proposer to review the requirements with which it would have to comply if its proposal was successful. For grants and cooperative agreements to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes, the subpart implements OMB guidance in 2 CFR 200.210(b), without variation.

4. Preamble to the General Terms and Conditions (Subdivision A of Division III of the Award)

Subpart D of the proposed part 1120 requires a DoD Component to include a preamble for each set of general terms and conditions that it maintains and specify its location as Subdivision A of the general terms and conditions in Division III of the award. The subpart requires the preamble to a set of general terms and conditions to contain important information about that set, such as the types of awards and recipient entities to which it applies. The only portion of the OMB guidance that relates to the proposed subpart D is the guidance in 2 CFR 200.111(b) on the need for a recipient, if a significant portion of its employees who are working under a Federal agency's award are not fluent in English, to provide a translation of the award into the language or languages with which its employees are familiar. The proposed subpart D clarifies that guidance by stating that a recipient must translate award content only to the extent that its compliance with award requirements depends on employees who are not fluent in English being able to read and comprehend that content.

5. Administrative Requirements Portion of the General Terms and Conditions (Subdivision B of Division III of the Award)

The proposed subpart E of part 1120 specifies what the administrative requirements portion of the general terms and conditions covers, where it is located within the award, and which DoDGARs part or parts governs the administrative requirements for awards to different types of recipients. It also encourages a DoD Component that is constructing general terms and conditions for awards to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes to incorporate the administrative requirements by reference to the portions of the DoDGARs that provide standard wording for that portion of the terms and conditions. For awards to those types of recipients, subpart E also implements OMB guidance in 2 CFR 200.210(b)(1)(i), without variation.

6. National Policy Requirements Portion of the General Terms and Conditions (Subdivision C of Division III of the Award)

The proposed content of subpart F of part 1120 provides direction to DoD Components concerning the scope, source, and location within the award format of national policy requirements. As the proposed subpart E does for administrative requirements, subpart F encourages a DoD Component to incorporate the standard wording that the DoDGARs provides for commonly applicable national policy requirements into general terms and conditions by reference. For awards to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes, subpart F implements OMB guidance in 2 CFR 200.210(b)(1)(ii), without variation.

7. Programmatic Requirements Portion of the General Terms and Conditions (Subdivision D of Division III of the Award)

The proposed subpart G of part 1120: (1) Clarifies what the programmatic requirements segment of the general terms and conditions includes, in relation to the content of the administrative and national policy requirements; (2) provides some specific examples of programmatic requirements; and (3) specifies the location of those requirements as Subdivision D of the general terms and conditions in Division III of the award. For awards to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes, subpart G implements, without variation, OMB guidance in 2 CFR 200.210(c) as it applies to program-specific requirements included in general terms and conditions.

C. Costs and Benefits

The primary benefit of the regulatory action proposed in this NPRM results from its standardization of the location of basic information about the award and requirements for recipients contained in award terms and conditions across awards made by about 100 DoD Component awarding offices. With that standardization, recipients, auditors, DoD post-award administrators, and others who use the content of DoD awards should be able to find what they need more quickly and easily within the 15,000 award actions per year that the awarding offices issue.

Another benefit of the proposed regulatory action is the encouragement for DoD Components to incorporate DoD-wide standard wording for administrative and national policy requirements into their general terms and conditions by reference. This approach makes it easier for recipients and others who use the terms and conditions to much more quickly identify how each awarding office's general terms and conditions vary from the DoD standard wording.

The administrative burdens and associated costs to recipients due to the regulatory action proposed in this NPRM are primarily those resulting from the Governmentwide guidance to agencies that OMB issued in 2 CFR part 200. The few variations from the guidance noted in sections I.B.1 and I.B.4 of this **SUPPLEMENTARY INFORMATION** section are minor, and any slight effect they will have on burdens and associated costs should be to reduce them.

II. Regulatory Analysis

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

Executive Order 12866, as supplemented by Executive Order 13563, directs each Federal agency to: Propose regulations only after determining that benefits justify costs; tailor regulations to minimize burdens on society, consistent with achieving regulatory objectives; maximize net benefits when selecting among regulatory approaches; to the extent feasible, specify performance objectives rather than the behavior or manner of compliance; and seek the views of those likely to be affected before issuing a notice of proposed rulemaking, where feasible and appropriate. The Department of Defense has determined that a regulatory implementation that includes a standard format for organizing the content of DoD Components' grant and cooperative agreement awards will maximize long-term benefits in relation to costs and burdens for recipients of those awards. This rule has been designated a ''significant regulatory action'' under section 3(f) of Executive Order 12866,

although not an economically significant one. Accordingly, the rule has been reviewed by OMB.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) (2 U.S.C. 1532) requires that a Federal agency prepare a budgetary impact statement before issuing a rule that includes any Federal mandate that may result in the expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in 1995 dollars, updated annually for inflation. In 2015, that inflation-adjusted amount in current dollars is approximately $146 million. The Department of Defense has determined that this proposed regulatory action will not result in expenditures by State, local, and tribal governments, or by the private sector, of that amount or more in any one year.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires an agency that is proposing a rule to provide a regulatory flexibility analysis or to certify that the rule will not have a significant economic impact on a substantial number of small entities. The Department of Defense certifies that this proposed regulatory action will not have a significant economic impact on substantial number of small entities beyond any impact due to provisions of it that implement OMB guidance at 2 CFR part 200.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35; 5 CFR part 1320, appendix A.1) (PRA), the Department of Defense has determined that there are no new collections of information contained in this proposed regulatory action.

Executive Order 13132, ''Federalism''

Executive Order 13132 establishes certain requirements that an agency must meet when it proposes a regulation that has Federalism implications. This proposed regulatory action does not have any Federalism implications.

List of Subjects in 2 CFR Part 1120

Business and Industry, Colleges and universities, Cooperative agreements, Grants administration, Hospitals, Indians, Nonprofit organizations, Small business, State and local governments.

■ Accordingly, 2 CFR chapter XI, subchapter C is proposed to be amended by adding part 1120 to read as follows:

PART 1120—FORMAT FOR DOD GRANT AND COOPERATIVE AGREEMENT AWARDS

Sec.
1120.1 Purpose of this part.
1120.2 Applicability of this part.
1120.3 DoD Component implementation.
1120.4 Elements and subelements of the standard award format in relation to the organization of this part.

Subpart A—Award Cover Pages

1120.100 Purpose of the award cover pages.
1120.105 Content of the award cover pages.
1120.110 Use of alternative to DoD form.

Subpart B—Award-specific Terms and Conditions

1120.200 Purpose and inclusion of award-specific terms and conditions.
1120.205 Organization and wording of award-specific terms and conditions.

Subpart C—General Terms and Conditions

1120.300 Purpose of general terms and conditions.
1120.305 Requirement for general terms and conditions.
1120.310 Use of plain language.
1120.315 Availability of general terms and conditions.

Subpart D—Preamble to the General Terms and Conditions

1120.400 Requirement to include a preamble.
1120.405 Content of the preamble.

Subpart E—Administrative Requirements Portion of the General Terms and Conditions

1120.500 Scope of administrative requirements.
1120.505 Location of administrative requirements in the standard award format.
1120.510 Sources of administrative requirements.
1120.515 Incorporation of administrative requirements into general terms and conditions by reference.

Subpart F—National Policy Requirements Portion of the General Terms and Conditions

1120.600 Scope of national policy requirements.
1120.605 Location of national policy requirements in the standard award format.
1120.610 Source of national policy requirements.
1120.615 Incorporation of national policy requirements into general terms and conditions by reference.

Subpart G—Programmatic Requirements Portion of the General Terms and Conditions

1120.700 Scope of programmatic requirements.
1120.705 Location of programmatic requirements in the standard award format.
1120.710 Examples of programmatic requirements.

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

§ 1120.1 Purpose of this part.

This part of the DoD Grant and Agreement Regulations (DoDGARs) establishes a standard format for DoD Components' grant and cooperative agreement awards. It thereby makes the content easier for a recipient to locate in different DoD Components' awards.

§ 1120.2 Applicability of this part.

(a) *To whom it applies.* This part:

(1) Sets forth requirements for DoD Components that award grants and cooperative agreements.

(2) Does not impose requirements on recipients of DoD Components' awards.

(b) *To what awards it applies.* This part applies to grants and cooperative agreements, other than Technology Investment Agreements (TIAs), awarded to any type of recipient entity.

§ 1120.3 DoD Component implementation.

Each DoD Component that awards grants or cooperative agreements must:

(a) Conform the format of its awards to the standard format established by this part no later than [18 months after the effective date of the final rule].

(b) Update electronic systems it maintains for generating awards within 18 months of the issuance of a new or updated DoD form for the award cover pages, in order to implement that form in those systems, unless it has an approved deviation in accordance with § 1120.110.

§ 1120.4 Elements and subelements of the standard award format in relation to the organization of this part.

(a) The standard award format has three major elements that are designated as Divisions I through III of the award.

(1) The first major element of the standard award format is comprised of the award cover pages. It is designated as Division I of the award.

(2) The second major element is comprised of any award-specific terms and conditions. That element is designated as Division II of the award.

(3) The last of the three major elements of the standard award format is comprised of the general terms and conditions. That element is designated as Division III of the award. It has four subelements that are designated as Subdivisions A through D of the general terms and conditions.

(i) The first subelement of the general terms and conditions is the preamble, which is designated as Subdivision A.

(ii) The second subelement of the general terms and conditions is comprised of terms and conditions addressing administrative requirements. That subelement is designated as

Subdivision B of the general terms and conditions.

(iii) The third subelement of the general terms and conditions is comprised of terms and conditions addressing national policy requirements. That subelement is designated as Subdivision C of the general terms and conditions.

(iv) The last of the four subelements of the general terms and conditions is comprised of any programmatic requirements that apply to awards using those general terms and conditions. That subelement is designated as Subdivision D of the general terms and conditions.

(b) This part has seven subparts. Each subpart addresses one major element or subelement of the standard award format, as shown in the following table:

Major element or subelement of the standard award format	Subpart of this part
(1) Division I—Award cover pages	Subpart A.
(2) Division II—Award-specific terms and conditions, if any	Subpart B.
(3) Division III—General terms and conditions, comprised of four subelements	Subpart C.
(i) Subdivision A—The preamble to the general terms and conditions	Subpart D.
(ii) Subdivision B—General terms and conditions for administrative requirements	Subpart E.
(iii) Subdivision C of the—General terms and conditions for national policy requirements	Subpart F.
(iv) Subdivision D—General terms and conditions for programmatic requirements, if any	Subpart G.

Subpart A—Award Cover Pages

§ 1120.100 Purpose of the award cover pages.

The award cover pages comprise the portion of each DoD Component award or modification to an award that the DoD Component transmits to the recipient when it makes the award or modification. It:

(a) Contains basic information about the award or modification and the recipient, as described in § 1120.105;

(b) Is signed by a DoD grants officer; and

(c) Also is signed by the recipient's authorized organizational representative if the award or modification is a bilateral action that is to be signed on behalf of both the DoD Component and recipient.

§ 1120.105 Content of the award cover pages.

The award cover pages of each DoD Component award or modification:

(a) Must include, as a minimum, the following information about the award or modification:

(1) The name of the DoD Component awarding office that made the award or modification.

(2) The award number and, if the action is a modification, the modification number.

(3) The type of award—*e.g.*, grant or cooperative agreement.

(4) The type of award action—*e.g.*, new award, funding modification, or administrative (non-funding) modification. For an administrative modification, the award cover pages should include a brief description of the purpose of the modification (*e.g.*, a no-cost extension of the end date of the period of performance).

(5) For a new award or funding modification:

(i) A brief description of the project or program supported by the award.

(ii) The amount of the obligation or deobligation of Federal funds due to the current action and any accompanying change in the total amount of cost sharing or matching required under the award.

(iii) The cumulative amounts of Federal funds and any corresponding non-Federal share obligated to date (*i.e.*, the sums of the amounts of the current action and the cumulative amounts of prior obligations and deobligations).

(iv) The total amount of the project costs in the currently approved budget through the end of the period of performance, the Federal share of that amount, and the non-Federal share.

(v) The total value of the award; the Federal share of that total value (which includes Federal funding obligated to date; future incremental funding actions; and options for which amounts have been predetermined, whether or not they have been exercised yet); and the non-Federal share of that total value (*i.e.*, total cost sharing or matching required under the award).

(vi) A table such as the following may be helpful in clearly presenting the information described in paragraphs (a)(5)(ii) through (vi) of this section:

	Federal funds	Corresponding non-Federal share	Total amount
(A) Obligated or deobligated this action. (B) Cumulative obligations to date, including this and previous actions. (C) Planned project costs in the currently approved budget through the end of the period of performance, to include any future incremental funding obligations. (D) Total value, which includes any unexercised options for which amounts were established in the award.			

(6) The obligation date (*i.e.,* the date of the grants officer's signature) and, if different, the effective date.

(7) The start date and current end date of the period of performance.

(8) The statutory authority or authorities under which the award or modification was made.

(9) The number and title of the program listed in the Catalog of Federal Domestic Assistance under which the award or modification was made.

(10) For a new award (or, as needed, in a modification that amends any of the following information):

(i) Whether the project or program under the award is research and development (R&D). This information is needed by auditors performing single audits of recipients because the OMB guidance to the auditors treats all Federal agencies' R&D programs as a single group (or ''cluster'') of programs for audit sampling purposes (see the Single Audit Act requirements implemented in subpart E of 2 CFR part 1128 and FMS Article V in appendix E to part 1128).

(ii) What the award includes in addition to the cover pages—*i.e.,* the:

(A) Scope of work or other appropriate content to specify the goals and objectives of the project or program supported by the award;

(B) Approved budget; and

(C) General, and any award-specific, terms and conditions of the award.

(iii) Where the other portions of the award listed in paragraph (a)(10)(ii) of this section are located. A DoD Component generally should indicate in the award cover pages that the award includes the general terms and conditions by reference and specify their location (see § 1120.315), rather than transmit them in their entirety with each award.

(iv) The order of precedence in the event of conflict among the general and any award-specific terms and conditions and other potential sources of requirements (*e.g.,* Federal statutes).

(v) The name of, and contact information for, the individual or office in the DoD responsible for post-award administration of the award. If there are multiple individuals and offices for different post-award functions (*e.g.,* payments and property administration), the award cover pages should provide information about each.

(vi) The name of, and contact information for, the DoD Component's program manager or other point of contact for programmatic matters.

(b) Must include, as a minimum, the following information about the recipient entity:

(1) The recipient's unique entity identifier required for its registration in the System for Award Management (SAM). Currently, that is the Dun and Bradstreet Data Universal Numbering System (DUNS) number.

(2) The recipient's business name and address, which must be the legal business or ''doing business as'' name and physical address in SAM at the time of award corresponding to the recipient's unique entity identifier.

(3) The name and title of the recipient's authorized representative, either the individual who signed the application or proposal on behalf of the recipient entity or another individual designated by that entity.

(4) The name of the recipient's Project or Program Director (PD) or Principal Investigator (PI) and his or her organization, if different from the name of the recipient organization. If there are multiple PD's or PI's, the name and organization of each should be included.

(5) The indirect cost rate in effect at the start of the performance period for the award, which generally is a Governmentwide rate negotiated by the recipient's cognizant agency for indirect costs. However, this requirement does not apply—*i.e.,* the award cover pages need not include the recipient's indirect cost rate—if the recipient entity affirms that it treats its indirect cost rate as proprietary information.

(c) May also include, as applicable, elements such as:

(1) A statement that the award can be amended only by a grants officer. The statement might also explain how amendments are issued.

(2) Information about any planned, future incremental funding or options for which amounts were pre-determined.

§ 1120.110 Use of alternative to DoD form.

(a) A DoD Component may use something other than a DoD form as its award cover pages only if:

(1) There is not currently any DoD form for the award cover pages; or

(2) The DoD Component obtains approval for a deviation from the requirement to use a DoD form from the Office of the Assistant Secretary of Defense for Research and Engineering, in accordance with the procedures specified in 32 CFR 21.340.

(b) If a DoD Component does not use a DoD form for its award cover pages, as described in paragraph (a) of this section, its award cover pages must include all information specified in § 1120.105.

Subpart B—Award-specific Terms and Conditions

§ 1120.200 Purpose and inclusion of award-specific terms and conditions.

A DoD Component must include with each award, for transmission to the recipient, any terms and conditions needed to communicate requirements specific to the individual award as distinct from the more broadly applicable requirements in the general terms and conditions. For a modification to an award, only changes to previously transmitted terms and conditions must be included.

§ 1120.205 Organization and wording of award-specific terms and conditions.

DoD Components should organize and word award-specific terms and conditions to make them as clear and easy to understand as possible for the benefit of recipients, award administrators, auditors, and others who may need to use them. The DoDGARs specify neither a standard organization nor standard wording for award-specific terms and conditions.

Subpart C—General Terms and Conditions

§ 1120.300 Purpose of general terms and conditions.

The general terms and conditions comprise the portion of the award with requirements that apply to a class of awards (*e.g.,* awards under a particular program or type of program activity, such as research or education, or for a class of recipients, such as for-profit entities).

§ 1120.305 Requirement for general terms and conditions.

Each DoD Component must establish at least one set of general terms and conditions. A DoD Component may have more than one set, as it deems appropriate to reflect differences in its award terms and conditions across different programs, classes of recipients, or types of activity.

§ 1120.310 Use of plain language.

(a) DoD Components must use plain language in:

(1) General terms and conditions of grants and cooperative agreements to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes. Those awards are subject to the DoDGARs provisions in:

(i) 2 CFR parts 1128 through 1138, the appendices to which provide standard wording for general terms and conditions addressing administrative requirements. That standard wording uses personal pronouns.

(ii) 2 CFR part 1122, the appendices to which provide standard wording for general terms and conditions addressing commonly applicable national policy requirements. That standard wording also uses personal pronouns.

(2) The national policy requirements in Subdivision B of general terms and conditions of grants and cooperative agreements to for-profit entities, which also are subject to 2 CFR part 1122.

(b) Although the DoDGARs currently do not provide standard wording for terms and conditions addressing administrative requirements for use in awards to for-profit entities, DoD Components are strongly encouraged to use plain language and personal pronouns in their terms and conditions of those other awards. The DoDGARs provisions that specify the administrative requirements to incorporate into those terms and conditions are listed in § 1120.510(b).

§ 1120.315 Availability of general terms and conditions.

(a) A DoD Component that issues a program announcement under which

grants or cooperative agreements may be awarded must maintain on the Internet the general terms and conditions for those awards if:

(1) The distribution of the program announcement is unlimited; and

(2) The DoD Component anticipates making 10 or more awards per year using those general terms and conditions.

(b) Each DoD Component that maintains a set of general terms and conditions on the Internet must also maintain an archive of previous versions of that set at the same Internet location, for use by recipients, post-award administrators, auditors, and others. Each version must be labeled with its effective dates.

(c) If a DoD Component has a set of general terms and conditions that is not subject to the requirement in paragraph (a) of this section and the DoD Component chooses not to maintain that set on the Internet:

(1) It must tell potential applicants or proposers in the program announcement, if there is one, how they may view or obtain a copy of the general terms and conditions; or

(2) If there is no program announcement (*e.g.,* if it is a noncompetitive program for which all recipients are known in advance), the DoD Component must provide the general terms and conditions to each recipient no later than the time of award.

Subpart D—Preamble to the General Terms and Conditions

§ 1120.400 Requirement to include a preamble.

Each DoD Component must include a preamble as Subdivision A of each set of general terms and conditions it maintains, to provide information to help recipients understand how to use those terms and conditions.

§ 1120.405 Content of the preamble.

The preamble for each set of general terms and conditions must include at least the following information elements, organized in the order shown:

(a) *Table of contents.* This should show the articles within each other subdivision of the general terms and conditions (Subdivisions B and C for administrative and national policy requirements and, if needed, Subdivision D for programmatic requirements).

(b) *Scope.* This element identifies the programs, types of awards, and types of recipient entities that are subject to the set of general terms and conditions.

(c) *Effective date.* This is the date on which the particular version of the set of general terms and conditions became effective, which enables a recipient to easily distinguish it from any earlier or subsequent versions. The version date of each article within the general terms and conditions must be indicated in parentheses following the title of the article, to help a recipient identify the articles that changed from previous versions of the general terms and conditions.

(d) *English language.* The purpose of this element of the preamble is to implement OMB guidance in 2 CFR 200.111(b) by informing each recipient that:

(1) It must translate any of the award content (including attachments to it and any material incorporated into the award by reference) into another language to the extent that the recipient's compliance with the award's terms and conditions depends upon a significant number of its employees who are not fluent in English being able to read and comprehend that content.

(2) If it does translate any award content into another language, either as required by paragraph (d)(1) of this section or at its own initiative, the original award content in the English language will take precedence in the event of an inconsistency between the award requirements in the English and translated versions.

(e) *Plain language.* This section of the preamble is required when the general terms and conditions use personal pronouns, in accordance with § 1120.310. Its purpose is to inform recipients about the meanings of those personal pronouns.

(f) *Definitions.* Providing the definitions of words and phrases that are used in the general terms and conditions and defined in the DoDGARs is more helpful to recipients than referring them to the DoDGARs to find the definitions.

Subpart E—Administrative Requirements Portion of the General Terms and Conditions

§ 1120.500 Scope of administrative requirements.

The administrative requirements in an award are post-award and after-the-award requirements for recipients in the following subject matter areas:

(a) Financial and program management, to include financial management system standards, payment, allowable costs, program and budget revisions, audits, cost sharing or matching, and program income.

(b) Property administration, to include title vesting, property management system standards, and use and disposition of tangible and intangible property.

(c) Recipient procurement procedures.

(d) Financial, programmatic, property, and other reporting.

(e) Records retention and access, remedies, claims and disputes, and closeout.

§ 1120.505 Location of administrative requirements in the standard award format.

As shown in the table in § 1120.4(b), the standard award format includes administrative requirements as Subdivision B of the general terms and conditions.

§ 1120.510 Sources of administrative requirements.

The source of administrative requirements is:

(a) Subchapter D of this chapter for grant and cooperative agreement awards to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes. Subchapter D provides a standard set of articles into which a DoD Component organizes the administrative requirements. It also provides standard wording for the general terms and conditions in those articles, as explained in the overview of subchapter D in 2 CFR part 1126.

(b) 32 CFR part 34 for grant and cooperative agreement awards to for-profit entities. That part of the DoDGARs specifies the administrative requirements for awards to those entities but does not provide standard articles or terms and conditions.

§ 1120.515 Incorporation of administrative requirements into general terms and conditions by reference.

(a) For awards to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes, DoD Components are strongly encouraged to construct the portion of their general terms and conditions addressing administrative requirements by:

(1) Incorporating the standard wording of each article of administrative requirements provided in subchapter D of this chapter (the standard wording of the articles is in the appendices to 2 CFR parts 1128 through 1138) into those general terms and conditions by reference; and

(2) Stating any variations from that standard wording (*e.g.,* any sections or paragraphs that the DoD Component adds, revises, or omits, consistent with the DoDGARs prescription for use of the standard wording).

(b) Incorporating that standard wording into general terms and conditions by reference, rather than

including the full text of each article of the general terms and conditions, will make it easier for those who must use terms and conditions of multiple DoD Components' awards (*e.g.,* recipients, DoD Components' post-award administrators, and auditors) to quickly identify how each Component's general terms and conditions differ from the DoD standard wording.

Subpart F—National Policy Requirements Portion of the General Terms and Conditions

§ 1120.600 Scope of national policy requirements.

National policy requirements, as defined in 2 CFR 1122.2, are requirements:

(a) That are prescribed by a statute, Executive order, policy guidance issued by the Executive Office of the President, or regulation that specifically refer to grants, cooperative agreements, or financial assistance in general;

(b) With which a recipient of a grant or cooperative agreement must comply during the period of performance; and

(c) That are outside subject matter areas covered by administrative requirements, as described in § 1120.500.

§ 1120.605 Location of national policy requirements in the standard award format.

As shown in the table in § 1120.4(b), the standard award format includes national policy requirements as Subdivision C of the general terms and conditions.

§ 1120.610 Source of national policy requirements.

The source of national policy requirements is 2 CFR part 1122.

§ 1120.615 Incorporation of national policy requirements into general terms and conditions by reference.

For the same reason given in § 1120.515(b), DoD Components are strongly encouraged to construct the portion of their general terms and conditions addressing national policy requirements for awards to all types of recipient entities, including for-profit entities, by:

(a) Incorporating the standard wording of each article of national policy requirements provided in the appendices to 2 CFR part 1122 into those general terms and conditions by reference; and

(b) Stating any variations from that standard wording (*e.g.,* any added, omitted, or revised paragraphs, based on which national policy requirements apply to programs and recipients for which the general terms and conditions are used).

Subpart G—Programmatic Requirements Portion of the General Terms and Conditions

§ 1120.700 Scope of programmatic requirements.

A requirement is most appropriately included in the programmatic requirements portion of the general terms and conditions if it:

(a) Is not in one of the subject matter areas covered by the administrative requirements in Subdivision B of the general terms and conditions, as described in § 1120.500.

(b) Does not meet the criteria in § 1120.600 for a national policy requirement.

(c) Broadly applies to awards using the general terms and conditions. Requirements that apply to relatively few of those awards are more appropriately included in the award-specific terms and conditions of the individual awards to which they apply.

(d) Is expected to be in effect for the foreseeable future, rather than for a limited period of time. For example, a requirement in an annual appropriations act that applies specifically to funding made available by that act is better addressed through the award-specific terms and conditions of awards or modifications to which it applies.

§ 1120.705 Location of programmatic requirements in the standard award format.

As shown in the table in § 1120.4(b), the standard award format includes programmatic requirements as Subdivision D of the general terms and conditions.

§ 1120.710 Examples of programmatic requirements.

Examples of provisions appropriately included as programmatic requirements in Subdivision D of the general terms and conditions include:

(a) Requirements for recipients to acknowledge the DoD Component's support in publications of results of the projects or programs performed under awards.

(b) Requirements for recipients to promptly alert the DoD Component if they develop any information in the course of performing the projects or programs under their awards that, in their judgment, might adversely affect national security if disclosed.

(c) Reservation of the Government's right to use non-Federal personnel in any aspect of post-award administration of awards, with appropriate nondisclosure requirements on those personnel to protect sensitive information about recipients or the projects or programs supported by their awards.

Dated: October 19, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–25699 Filed 11–4–16; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

2 CFR Part 1122

[DOD–2016–OS–0053]

RIN 0790–AJ48

National Policy Requirements: General Award Terms and Conditions

AGENCY: Office of the Secretary, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: This notice of proposed rulemaking (NPRM) is the fourth of a sequence of six NPRM documents in this issue of the **Federal Register**. This NPRM proposes to add a new Department of Defense Grant and Agreement Regulations (DoDGARs) part to establish a consistent way for DoD Components to organize the portion of their general terms and conditions covering national policy requirements in areas such as nondiscrimination, environmental protection, and live organisms. The new part also provides standard wording of terms and conditions for national policy requirements that apply generally to DoD programs and awards.

DATES: To ensure that they can be considered in developing the final rule, comments must be received at either the Web site or mailing address indicated below by February 6, 2017.

ADDRESSES: You may submit comments identified by docket number, or by Regulatory Information Number (RIN) and title, by either of the following methods:

The Web site: http://www.regulations.gov. Follow the instructions at that site for submitting comments.

Mail: Department of Defense, Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, ATTN: Box 24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from the public is to make the

submissions available for public viewing on the Internet at *http://www.regulations.gov* without change (*i.e.,* as they are received, including any personal identifiers or contact information).

FOR FURTHER INFORMATION CONTACT: Wade Wargo, Basic Research Office, telephone 571–372–2941.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of the Regulatory Action

1. The Need for the Regulatory Action and How the Action Meets That Need

As explained in the **SUPPLEMENTARY INFORMATION** section of the first of the sequence of NPRMs in this section of this issue of the **Federal Register**, these six NPRMS collectively make a major portion of needed updates to the Department of Defense Grant and Agreement Regulations (DoDGARs). The purpose of this NPRM, the fourth of the sequence, is to maximize uniformity of general terms and conditions addressing national policy requirements within DoD grant and cooperative agreement awards.

Important context for this NPRM is provided by the second NPRM in this section of this issue of the **Federal Register**. That second NPRM proposes a new part 1120 of the DoD Grant and Agreement Regulations to establish a standard award format for DoD Components' grants and cooperative agreements. As described in section 1120.4 of that proposed new part:

- The standard award format has three major elements that are designated as Divisions I through III of the award. The third division, Division III, contains the general terms and conditions of the award.
- The general terms and conditions in Division III have four subelements that are designated as Subdivisions A through D. Subdivision C, the third of the four subelements of Division III, is comprised of general terms and conditions addressing national policy requirements.

This NPRM proposes a new part 1122 of the DoDGARs (2 CFR part 1122) to address the general terms and conditions that the proposed award format places in Subdivision C of Division III of DoD Components' grant and cooperative agreement awards. The specific purposes of the proposed part are to establish: (1) A standard organization for the general terms and conditions addressing national policy requirements; and (2) standard wording of terms and conditions for the national policy requirements that commonly apply to DoD Components' grants and cooperative agreements.

It should be noted that the proposed part 1122 applies to grant and cooperative agreement awards to all types of recipient entities. That scope distinguishes the proposed part 1122 from the seven new parts of the DoDGARs proposed in the NPRM immediately preceding this one in this issue of the **Federal Register**. Those proposed parts address the organization and content of general terms and conditions for administrative requirements, which the proposed standard award format includes in a different subdivision of the general terms and conditions. However, unlike the proposed part 1122, the seven proposed parts address administrative requirements only for awards to institutions of higher education, nonprofit entities, States, local governments, and Indian tribes, and not for all types of recipients.

2. Legal Authorities for the Regulatory Action

There are two statutory authorities for this NPRM:

- 10 U.S.C. 113, which establishes the Secretary of Defense as the head of the Department of Defense; and
- 5 U.S.C. 301, which authorizes the head of an Executive department to prescribe regulations for the governance of that department and the performance of its business.

B. Summary of the Major Provisions of the Regulatory Action

1. Definition of ''National Policy Requirement''

The proposed section 2 CFR 1122.2 provides a definition of ''national policy requirement'' to help DoD Components distinguish the requirements that are to be addressed in Subdivision C of the general terms and conditions from those to be addressed in the subdivisions with administrative or programmatic requirements.

2. Organization of National Policy Requirements Into Articles

The proposed section 2 CFR 1122.105 lists the four articles into which DoD Components are to organize their general terms and conditions addressing national policy requirements. It also explains how part 1122 is organized, with an appendix for each of the four articles to provide standard wording of general terms and conditions addressing commonly applicable national policy requirements.

3. Prescriptive Wording for DoD Components

The proposed sections 2 CFR 1122.115 and 1122.120 provide direction to DoD Components on inclusion of applicable requirements in the four articles of national policy requirements. The proposed prescriptive wording requires DoD Components to use the standard wording of terms and conditions provided in the appendices to 2 CFR part 1122 unless a statute or regulation authorized alternate wording.

4. Flowdown to Subrecipients

The proposed wording of terms and conditions in 2 CFR part 1122 does not establish a requirement for recipients to flow down national policy requirements to lower-tier subrecipients. For DoD Component awards to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes, that requirement is addressed in a proposed new 2 CFR part 1138. Part 1138 provides a standard organization and wording for general terms and conditions related to recipients' award and administration of subawards under DoD grants and cooperative agreements. The proposed part 1138 addresses flowdown of both administrative and national policy requirements to all types of subrecipient entities. It is one of the seven new parts proposed in the NPRM immediately preceding this one in this issue of the **Federal Register**.

5. Supersession

The proposed 2 CFR part 1122 supersedes the current table entitled ''Suggested Award Provisions for National Policy Requirements That Often Apply,'' which is in Appendix B to part 22 of the DoDGARs (32 CFR part 22). The last in the sequence of six NPRMs in this section of this issue of the **Federal Register** therefore proposes to remove that appendix from 32 CFR part 22 as one of the needed conforming changes to existing DoDGARs parts.

C. Costs and Benefits

The principal benefits of the regulatory action proposed in this NPRM are that recipients, auditors, DoD post-award administrators, and others who use the content of awards from multiple DoD Component awarding offices should:

- Be able to find what they need within different offices' awards more quickly and easily due to the standard organization for general terms and conditions covering national policy requirements.

• Spend less time evaluating terms and conditions, because the standard wording for commonly applicable national policy requirements will obviate the need to interpret different wording various offices' awards include for the same requirement.

If this proposed regulatory action has any impact on a recipient's costs of complying with applicable national policy requirements, we therefore expect that the impact would be to reduce those costs.

IV. Regulatory Analysis

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

Executive Order 12866, as supplemented by Executive Order 13563, directs each Federal agency to: Propose regulations only after determining that benefits justify costs; tailor regulations to minimize burdens on society, consistent with achieving regulatory objectives; maximize net benefits when selecting among regulatory approaches; to the extent feasible, specify performance objectives rather than the behavior or manner of compliance; and seek the views of those likely to be affected before issuing a notice of proposed rulemaking, where feasible and appropriate. The Department of Defense has determined that a regulatory implementation that includes a standard organization for the national policy requirements within general terms and conditions of DoD Components' grant and cooperative agreement awards, as well as standard wording of commonly applicable requirements, will maximize long-term benefits in relation to costs and burdens for recipients of those awards. This rule has been designated a ''significant regulatory action'' under section 3(f) of Executive Order 12866, although not an economically significant one. Accordingly, the rule has been reviewed by OMB.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) (2 U.S.C. 1532) requires that a Federal agency prepare a budgetary impact statement before issuing a rule that includes any Federal mandate that may result in the expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in 1995 dollars, updated annually for inflation. In 2015, that inflation-adjusted amount in current dollars is approximately $146 million. The Department of Defense has determined that this proposed regulatory action will not result in expenditures by State, local, and tribal governments, or by the private sector, of that amount or more in any one year.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires an agency that is proposing a rule to provide a regulatory flexibility analysis or to certify that the rule will not have a significant economic impact on a substantial number of small entities. The Department of Defense certifies that this proposed regulatory action will not have a significant economic impact on substantial number of small entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35; 5 CFR part 1320, Appendix A.1) (PRA), the Department of Defense has determined that there are no new collections of information contained in this proposed regulatory action.

Executive Order 13132, ''Federalism''

Executive Order 13132 establishes certain requirements that an agency must meet when it proposes a regulation that has Federalism implications. This proposed regulatory action does not have any Federalism implications.

List of Subjects in 2 CFR Part 1122

Business and industry, Colleges and universities, Cooperative agreements, Grants administration, Hospitals, Human research subjects, Indians, Nonprofit organizations, Research misconduct, Small business, State and local governments.

■ Accordingly, 2 CFR chapter XI is proposed to be amended by adding part 1122 to read as follows:

PART 1122—NATIONAL POLICY REQUIREMENTS: GENERAL AWARD TERMS AND CONDITIONS

Sec.

Subpart A—General

1122.1 Purpose of this part.
1122.2 Definition of ''national policy requirement.''
1122.3 Definitions of other terms as they are used in this part.

Subpart B—Terms and Conditions

1122.100 Purpose of this subpart.
1122.105 Where to find the terms and conditions.
1122.110 Organization of each article of national policy requirements.
1122.115 Cross-cutting national policy requirements.
1122.120 Other national policy requirements.
Appendix A Terms and condition for NP Article I, ''Nondiscrimination National Policy Requirements.''
Appendix B Terms and condition for NP Article II, ''Environmental National Policy Requirements.''
Appendix C Terms and conditions for NP Article III, ''National Policy Requirements Concerning Live Organisms.''
Appendix D Terms and conditions for NP Article IV, ''Other National Policy Requirements.''

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

Subpart A–General

§ 1122.1 Purpose of this part.

(a) This part specifies a standard format and standard wording of general terms and conditions for Subdivision B of the general terms and conditions of DoD grants and cooperative agreements, which concerns national policy requirements.

(b) It thereby implements:

(1) OMB guidance in 2 CFR 200.210(b)(ii) and 200.300, as those paragraphs of 2 CFR part 200 relate to national policy requirements for general terms and conditions of DoD awards to institutions of higher education and other nonprofit organizations, States, local governments, and Indian tribes.

(2) National policy requirements, to the extent they apply, for general terms and conditions of DoD awards to for-profit firms, foreign organizations, and foreign public entities.

§ 1122.2 Definition of ''national policy requirement.''

For the purposes of this chapter, a national policy requirement is a requirement:

(a) That is prescribed by a statute, Executive order, policy guidance issued by the Executive Office of the President, or regulation that specifically refers to grants, cooperative agreements, or financial assistance in general;

(b) With which a recipient of a grant or cooperative agreement must comply during the period of performance; and

(c) That is outside subject matter areas covered by administrative requirements in Subchapters D or E of this chapter.

§ 1122.3 Definition of other terms as they are used in this part.

Because the meaning of some terms used in this part derive from their definitions in the statutes, Executive orders, or other sources of national policy requirements that this part implements, the meanings of those terms may vary from their meanings in other parts of the DoDGARs. For example, some statutes define ''State''in ways that differ from each other and from the definition provided in 2 CFR

part B. In each case, the definition in the source of the pertinent national policy requirement takes precedence over the definition in 2 CFR part B for the purposes of complying with that requirement.

Subpart B–Terms and Conditions

§ 1122.100 Purpose of this subpart.

This subpart provides:

(a) Direction to DoD Components on how to construct the four articles of national policy requirements for inclusion in the general terms and conditions of grants and cooperative agreements.

(b) Standard wording for national policy requirements that are more commonly applicable to DoD Components' grants and cooperative agreements.

§ 1122.105 Where to find the terms and conditions.

(a) Appendices A through D of this part provide standard wording of terms and conditions for the four articles of national policy requirements. The articles address the rights and responsibilities of the Government and the recipient related to those national policy requirements.

(b) The following table shows which national policy terms and conditions may be found in each appendix to this part:

In . . .	You will find terms and conditions specifying recipients' rights and responsibilities related to . . .	That would appear in an award within NP article . . .
Appendix A	Non-discrimination national policy requirements	I.
Appendix B	Environmental national policy requirements	II.
Appendix C	National policy requirements concerning live organisms	III.
Appendix D	Other national policy requirements	IV.

§ 1122.110 Organization of each article of national policy requirements.

Each of NP Articles I through IV includes two sections.

(a) Section A of each article includes national policy requirements that are cross-cutting in that their applicability extends to many or all DoD awards. Appendices A through D to this part provide standard wording for each of those requirements.

(b) Section B of each article is the location in the award for program-specific national policy requirements. Section B is reserved in the standard wording of the articles provided in appendices A through D to this part.

§ 1122.115 Cross-cutting national policy requirements.

(a) *General requirement to include applicable cross-cutting requirements.* A DoD Component's general terms and conditions must include the standard wording provided in Appendices A through D to this part for each national policy requirement addressed in Section A of NP Articles I, II, III, and IV, respectively, that may apply either to:

(1) A recipient of an award using those general terms and conditions; or

(2) A subrecipient of a subaward under an award using those general terms and conditions.

(b) *Authority to reserve or omit inapplicable paragraphs.* A DoD Component may reserve or omit any paragraph Appendices A through D to this part provide for Section A of NP Articles I, II, III, and IV of its general terms and conditions if it determines that the national policy requirement addressed in that paragraph will not apply to any awards using those terms and conditions nor to any subawards under them.

(c) *Authority to use alternate wording.* (1) A DoD Component may use different wording for a national policy requirement than is provided in Appendices A through D to this part if it is authorized or required to do so by a statute or a regulation published in the Code of Federal Regulations after opportunity for public comment.

(2) A DoD Component in that case:

(i) Must include the wording required by the statute or regulation in Section B of the appropriate article. This will help a recipient recognize the wording as a variation of the usual DoD wording for the requirement.

(ii) May either reserve the paragraph of Section A of the article in which that national policy requirement otherwise would appear, or insert in that paragraph wording to refer the recipient to the paragraph in Section B of the article in which the requirement does appear.

§ 1122.120 Other national policy requirements.

If a DoD Component determines that awards using its general terms and conditions, or subawards under them, are subject to a national policy requirement that is not addressed in the standard wording Appendices A through D to this part provide for cross-cutting requirements, the DoD Component must include the requirement in its general terms and conditions. It should add the requirement in Section B of NP Article I, II, III, or IV, as most appropriate to the subject matter of the requirement.

Appendix A to Part 1122—Terms and Conditions for NP Article I, ''Nondiscrimination National Policy Requirements''

DoD Components are to use the following standard wording in NP Article I of their general terms and conditions in accordance with provisions of Subpart B of this part:

NP Article I. Nondiscrimination national policy requirements. (December 2014)

Section A. Cross-cutting nondiscrimination requirements

By signing this agreement or accepting funds under this agreement, you assure that you will comply with applicable provisions of the national policies prohibiting discrimination:

1. On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), as implemented by Department of Defense (DoD) regulations at 32 CFR part 195.

2. On the basis of gender, blindness, or visual impairment, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*), as implemented by DoD regulations at 32 CFR part 196.

3. On the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*), as implemented by Department of Health and Human Services regulations at 45 CFR part 90.

4. On the basis of disability, in the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DoD regulations at 32 CFR part 56.

5. On the basis of disability in the Architectural Barriers Act of 1968 (42 U.S.C. 4151 *et seq.*) related to physically handicapped persons' ready access to, and use of, buildings and facilities for which Federal funds are used in design, construction, or alteration.

Section B. Other nondiscrimination requirements

[Reserved]

Appendix B to Part 1122—Terms and Conditions for NP Article II, ''Environmental National Policy Requirements''

DoD Components are to use the following standard wording in NP Article II of their general terms and conditions in accordance with provisions of Subpart B of this part:

NP Article II. Environmental national policy requirements. (December 2014)

Section A. Cross-cutting environmental requirements

You must:

1. You must comply with all applicable Federal environmental laws and regulations. The laws and regulations identified in this section are not intended to be a complete list.

2. Comply with applicable provisions of the Clean Air Act (42 U.S.C. 7401, *et seq.*) and Clean Water Act (33 U.S.C. 1251, *et seq.*).

3. Comply with applicable provisions of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), as implemented by the Department of Housing and Urban Development at 24 CFR part 35. The requirements concern lead-based paint in buildings owned by the Federal Government or housing receiving Federal assistance.

4. Immediately identify to us, as the Federal awarding agency, any potential impact that you find this award may have on:

a. The quality of the ''human environment'', as defined in 40 CFR 1508.14, including wetlands; and provide any help we may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321 *et seq.*), the regulations at 40 CFR 1500–1508, and E.O. 12114, if applicable; and assist us to prepare Environmental Impact Statements or other environmental documentation. In such cases, you may take no action that will have an environmental impact (*e.g.,* physical disturbance of a site such as breaking of ground) or limit the choice of reasonable alternatives to the proposed action until we provide written notification of Federal compliance with NEPA or E.O. 12114.

b. Flood-prone areas, and provide any help we may need to comply with the National Flood Insurance Act of 1968, as amended by the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 *et seq.*), which require flood insurance, when available, for federally assisted construction or acquisition in flood-prone areas.

c. A land or water use or natural resource of a coastal zone that is part of a federally approved State coastal zone management plan and provide any help we may need to comply with the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, *et seq.*) including preparation of a Federal agency Coastal Consistency Determination.

d. Coastal barriers along the Atlantic and Gulf coasts and Great Lakes' shores, and provide help we may need to comply with the Coastal Barrier Resources Act (16 U.S.C. 3501 *et seq.*), concerning preservation of barrier resources.

e. Any existing or proposed component of the National Wild and Scenic Rivers system, and provide any help we may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 *et seq.*).

f. Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide any help we may need to comply with the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*).

5. You must comply fully with the Endangered Species Act of 1973, as amended (ESA, at 16 U.S.C. 1531 *et seq.*), and implementing regulations of the Departments of the Interior (50 CFR parts 10–24) and Commerce (50 CFR parts 217–227). You also must provide any help we may need in complying with the consultation requirements of ESA section 7 (16 U.S.C. 1536) applicable to Federal agencies or any regulatory authorization we may need based on the award of this grant. This is not in lieu of responsibilities you have to comply with provisions of the Act that apply directly to you as a U.S. entity, independent of receiving this award.

6. You must fully comply with the Marine Mammal Protection Act of 1972, as amended (MMPA, at 16 U.S.C. 1361 *et seq.*) and provide any assistance we may need in obtaining any required MMPA permit based on an award of this grant.

Section B. Other environmental requirements

[Reserved]

Appendix C to Part 1122—Terms and Conditions for NP Article III, ''National Policy Requirements Concerning Live Organisms''

DoD Components are to use the following standard wording in NP Article III of their general terms and conditions in accordance with provisions of Subpart B of this part:

NP Article III. National Policy Requirements Concerning Live Organisms. (December 2014)

Section A. Cross-Cutting Requirements Concerning Live Organisms

1. Human Subjects

a. You must protect the rights and welfare of individuals who participate as human subjects in research under this award and comply with the requirements at 32 CFR part 219, DoD Instruction (DoDI) 3216.02, 10 U.S.C. 980, and when applicable, Food and Drug Administration (FDA) regulations.

b. You must not begin performance of research involving human subjects, also known as human subjects research (HSR), that is covered under 32 CFR part 219, or that meets exemption criteria under 32 CFR 219.101(b), until you receive a formal notification of approval from a DoD Human Research Protection Official (HRPO). Approval to perform HSR under this award is received after the HRPO has performed a review of your documentation of planned HSR activities and has officially furnished a concurrence with your determination as presented in the documentation.

c. In order for the HRPO to accomplish this concurrence review, you must provide sufficient documentation to enable his or her assessment as follows:

i. If the HSR meets an exemption criteria under 32 CFR 219.101(b), the documentation must include a citation of the exemption category under 32 CFR 219.101(b) and a rationale statement.

ii. If your activity is determined as ''non-exempt research involving human subjects'', the documentation must include:

A. Assurance of Compliance (*i.e.,* Department of Health and Human Services Office for Human Research Protections (OHRP) Federalwide Assurance (FWA)) appropriate for the scope of work or program plan; and

B. Institutional Review Board (IRB) approval, as well as all documentation reviewed by the IRB to make their determination.

d. The HRPO retains final judgment on what activities constitute HSR, whether an exempt category applies, whether the risk determination is appropriate, and whether the planned HSR activities comply with the requirements in paragraph 1.a of this section.

e. You must notify the HRPO immediately of any suspensions or terminations of the Assurance of Compliance.

f. DoD staff, consultants, and advisory groups may independently review and inspect your research and research procedures involving human subjects and, based on such findings, DoD may prohibit research that presents unacceptable hazards or otherwise fails to comply with DoD requirements.

g. Definitions for terms used in paragraph 1 of this article are found in DoDI 3216.02.

2. Animals

a. Prior to initiating any animal work under the award, you must:

i. Register your research, development, test, and evaluation or training facility with the Secretary of Agriculture in accordance with 7 U.S.C. 2136 and 9 CFR section 2.30, unless otherwise exempt from this requirement by meeting the conditions in 7 U.S.C. 2136 and 9 CFR parts 1–4 for the duration of the activity.

ii. Have your proposed animal use approved in accordance with Department of Defense Instruction (DoDI) 3216.01, Use of Animals in DoD Programs by a DoD Component Headquarters Oversight Office.

iii. Furnish evidence of such registration and approval to the grants officer.

b. You must make the animals on which the research is being conducted, and all premises, facilities, vehicles, equipment, and records that support animal care and use available during business hours and at other times mutually agreeable to you, the United States Department of Agriculture Office of Animal and Plant Health Inspection Service (USDA/APHIS) representative, personnel representing the DoD component oversight offices, as well as the grants officer, to ascertain that you are compliant with 7 U.S.C. 2131 *et seq.,* 9 CFR parts 1–4, and DoDI 3216.01.

c. Your care and use of animals must conform with the pertinent laws of the United States, regulations of the Department of Agriculture, and regulations, policies, and procedures of the Department of Defense (see 7 U.S.C. 2131 *et seq.,* 9 CFR parts 1–4, and DoDI 3216.01).

d. You must acquire animals in accordance with DoDI 3216.01.

3. Use of Remedies

Failure to comply with the applicable requirements in paragraphs 1–2 of this section may result in the DoD Component's use of remedies, *e.g.,* wholly or partially terminating or suspending the award, temporarily withholding payment under the award pending correction of the deficiency, or disallowing all or part of the cost of the activity or action (including the federal share and any required cost sharing or matching) that is not in compliance. See OAR Article III.

Section B. Other Requirements Concerning Live Organisms

[Reserved]

Appendix D to Part 1122—Terms and Conditions for NP Article IV, ''Other National Policy Requirements''

DoD Components are to use the following standard wording in NP Article IV of their general terms and conditions in accordance with provisions of Subpart B of this part:

NP Article IV. Other National Policy Requirements. (December 2014)

Section A. Cross-Cutting Requirements

1. *Debarment and suspension.* You must comply with requirements regarding debarment and suspension in Subpart C of 2 CFR part 180, as adopted by DoD at 2 CFR part 1125. This includes requirements concerning your principals under this award, as well as requirements concerning your procurement transactions and subawards that are implemented in PROC Articles I through III and SUB Article II.

2. *Drug-free workplace.* You must comply with drug-free workplace requirements in Subpart B of 2 CFR part 26, which is the DoD implementation of 41 U.S.C. chapter 81, ''Drug-Free Workplace.''

3. *Lobbying.*

a. You must comply with the restrictions on lobbying in 31 U.S.C. 1352, as implemented by DoD at 32 CFR part 28, and submit all disclosures required by that statute and regulation.

b. You must comply with the prohibition in 18 U.S.C. 1913 on the use of Federal funds, absent express Congressional authorization, to pay directly or indirectly for any service, advertisement or other written matter, telephone communication, or other device intended to influence at any time a Member of Congress or official of any government concerning any legislation, law, policy, appropriation, or ratification.

c. If you are a nonprofit organization described in section 501(c)(4) of title 26, United States Code (the Internal Revenue Code of 1968), you may not engage in lobbying activities as defined in the Lobbying Disclosure Act of 1995 (2 U.S.C., chapter 26). If we determine that you have engaged in lobbying activities, we will cease all payments to you under this and other awards and terminate the awards unilaterally for material failure to comply with the award terms and conditions.

4. *Officials not to benefit.* You must comply with the requirement that no member of Congress shall be admitted to any share or part of this agreement, or to any benefit arising from it, in accordance with 41 U.S.C. 6306.

5. *Hatch Act.* If applicable, you must comply with the provisions of the Hatch Act (5 U.S.C. 1501–1508) concerning political activities of certain State and local government employees, as implemented by the Office of Personnel Management at 5 CFR part 151, which limits political activity of employees or officers of State or local governments whose employment is connected to an activity financed in whole or part with Federal funds.

6. *Native American graves protection and repatriation.* If you control or possess Native American remains and associated funerary objects, you must comply with the requirements of 43 CFR part 10, the Department of the Interior implementation of the Native American Graves Protection and Repatriation Act of 1990 (25 U.S.C., chapter 32).

7. *Fly America Act.* You must comply with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118), commonly referred to as the ''Fly America Act,'' and implementing regulations at 41 CFR 301–10.131 through 301–10.143. The law and regulations require that U.S. Government financed international air travel and transportation of personal effects or property must use a U.S. Flag air carrier or be performed under a cost sharing arrangement with a U.S. carrier, if such service is available.

8. *Use of United States-flag vessels.* You must comply with the following requirements of the Department of Transportation at 46 CFR 381.7, in regulations implementing the Cargo Preference Act of 1954:

a. Pursuant to Public Law 83–664 (46 U.S.C. 55305), at least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds under this award, and which may be transported by ocean vessel, must be transported on privately owned United States-flag commercial vessels, if available.

b. Within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, ''on-board'' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph 8.a of this section must be furnished to both our award administrator (through you in the case of your contractor's bill-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

9. *Research misconduct.* You must comply with requirements concerning research misconduct in Enclosure 4 to DoD Instruction 3210.7, ''Research Integrity and Misconduct.'' The Instruction implements the Governmentwide research misconduct policy that the Office of Science and Technology Policy published in the **Federal Register** (65 FR 76260, December 6, 2000, available through the U.S. Government Printing Office Web site: *http://www.gpo.gov/fdscys/browse/collection.action?Code=FR*).

10. *Requirements for an Institution of Higher Education Concerning Military Recruiters and Reserve Officers Training Corps (ROTC).*

a. As a condition for receiving funds available to the DoD under this award, you agree that you are not an institution of higher education (as defined in 32 CFR part 216) that has a policy or practice that either prohibits, or in effect prevents:

i. The Secretary of a Military Department from maintaining, establishing, or operating a unit of the Senior Reserve Officers Training Corps (ROTC)—in accordance with 10 U.S.C. 654 and other applicable Federal laws—at that institution (or any subelement of that institution);

ii. Any student at that institution (or any subelement of that institution) from enrolling in a unit of the Senior ROTC at another institution of higher education.

iii. The Secretary of a Military Department or Secretary of Homeland Security from gaining access to campuses, or access to students (who are 17 years of age or older) on campuses, for purposes of military recruiting in a manner that is at least equal in quality and scope to the access to campuses and to students that is provided to any other employer; or

iv. Access by military recruiters for purposes of military recruiting to the names of students (who are 17 years of age or older and enrolled at that institution or any subelement of that institution); their addresses, telephone listings, dates and places of birth, levels of education, academic majors, and degrees received; and the most recent educational institutions in which they were enrolled.

b. If you are determined, using the procedures in 32 CFR part 216, to be such an institution of higher education during the period of performance of this award, we:

i. Will cease all payments to you of DoD funds under this award and all other DoD grants and cooperative agreements; and

ii. May suspend or terminate those awards unilaterally for material failure to comply with the award terms and conditions.

11. *Historic preservation.* You must identify to us any:

a. Property listed or eligible for listing on the National Register of Historic Places that will be affected by this award, and provide any help we may need, with respect to this award, to comply with Section 106 of the National Historic Preservation Act of 1966 (54 U.S.C. 306108), as implemented by the Advisory Council on Historic Preservation regulations at 36 CFR part 800 and Executive Order 11593, ''Identification and Protection of Historic Properties,'' [3 CFR, 1971–1975 Comp., p. 559]. Impacts to historical properties are included in the definition of ''human environment'' that require impact assessment under NEPA (See NP Article II, Section A).

b. Potential under this award for irreparable loss or destruction of significant scientific, prehistorical, historical, or archeological data, and provide any help we may need, with respect to this award, to comply with the Archaeological and Historic

Preservation Act of 1974 (54 U.S.C. chapter 3125).

12. *Relocation and real property acquisition.* You must comply with applicable provisions of 49 CFR part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601, *et seq.*) and provides for fair and equitable treatment of persons displaced by federally assisted programs or persons whose property is acquired as a result of such programs.

13. *Confidentiality of patient records.* You must keep confidential any records that you maintain of the identity, diagnosis, prognosis, or treatment of any patient in connection with any program or activity relating to substance abuse education, prevention, training, treatment, or rehabilitation that is assisted directly or indirectly under this award, in accordance with 42 U.S.C. 290dd–2.

14. *Pro-Children Act.*

You must comply with applicable restrictions in the Pro-Children Act of 1994 (Title 20, Chapter 68, Subchapter X, Part B of the U.S. Code) on smoking in any indoor facility:

a. Constructed, operated, or maintained under this award and used for routine or regular provision of kindergarten, elementary, or secondary education or library services to children under the age of 18.

b. Owned, leased, or contracted for and used under this award for the routine provision of federally funded health care, day care, or early childhood development (Head Start) services to children under the age of 18.

15. *Constitution Day.* You must comply with Public Law 108–447, Div. J, Title I, Sec. 111 (36 U.S.C. 106 note), which requires each educational institution receiving Federal funds in a Federal fiscal year to hold an educational program on the United States Constitution on September 17th during that year for the students served by the educational institution.

16. *Trafficking in persons.* You must comply with requirements concerning trafficking in persons specified in the award term at 2 CFR 175.15(b), as applicable.

17. *Whistleblower protections.* You must comply with 10 U.S.C. 2409, including the:

a. Prohibition on reprisals against employees disclosing certain types of information to specified persons or bodies; and

b. Requirement to notify your employees in writing, in the predominant native language of the workforce, of their rights and protections under that statute.

Section B. Additional Requirements

[Reserved]

Dated: October 19, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–25700 Filed 11–4–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

2 CFR Parts 1126, 1128, 1130, 1132, 1134, 1136, and 1138

[DOD–2016–OS–0054]

RIN 0790–AJ49

Administrative Requirements Terms and Conditions for Cost-Type Awards to Nonprofit and Governmental Entities

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Proposed rule.

SUMMARY: This notice of proposed rulemaking (NPRM) is the third of a sequence of six NPRM documents in this section of this issue of the **Federal Register** that propose updates to the Department of Defense Grant and Agreement Regulations (DoDGARs). This NPRM proposes to add seven new DoDGARs parts to address the administrative requirements included in general terms and conditions of DoD cost-type grants and cooperative agreements awarded to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes. The administrative requirements are in areas such as financial and program management; property administration; recipient procurement procedures; financial, programmatic, and property reporting; and subawards. The proposed new parts establish a uniform way for approximately 100 DoD Component awarding offices to organize the administrative requirements in their general terms and conditions. The proposed new parts also provide standard wording of terms and conditions for the administrative requirements, with associated regulatory prescriptions for DoD Components to provide latitude to vary from the standard wording where variation is appropriate.

DATES: To ensure that they can be considered in developing the final rule, comments must be received at either the Web site or mailing address indicated below by February 6, 2017.

ADDRESSES: You may submit comments identified by docket number, or by Regulatory Information Number (RIN) and title, by either of the following methods:

The Web site: *http://www.regulations.gov*. Follow the instructions at that site for submitting comments.

Mail: Department of Defense, Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, ATTN: Box 24, Alexandria, VA 22350–1700.

Instructions: All submissions must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from the public is to make the submissions available for public viewing on the Internet at *http://www.regulations.gov* without change (*i.e.,* as they are received, including any personal identifiers or contact information).

FOR FURTHER INFORMATION CONTACT: Wade Wargo, Basic Research Office, telephone 571–372–2941.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of the Regulatory Action

1. The Need for the Regulatory Action and How the Action Meets That Need

The Department of Defense Grant and Agreement Regulations (DoDGARs) implement statutes and Governmentwide guidance for grants and cooperative agreements, as needed in order to ensure that DoD Component offices make and administer assistance awards consistently with agency policy. They are in need of updating, in part due to the issuance of new Office of Management and Budget guidance to Federal agencies on administrative requirements, cost principles, and audit requirements that apply to Federal grants, cooperative agreements, and other assistance instruments (2 CFR part 200). This NPRM provides a major portion of the implementation of that guidance, by addressing the administrative requirements to be included in general terms and conditions of DoD Components' awards to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes.

2. Legal Authorities for the Regulatory Action

There are two statutory authorities for this NPRM:

- 10 U.S.C. 113, which establishes the Secretary of Defense as the head of the Department of Defense; and
- 5 U.S.C. 301, which authorizes the head of an Executive department to prescribe regulations for the governance of that department and the performance of its business.

B. Summary of the Major Provisions of the Regulatory Action

This NPRM establishes seven new DoDGARs parts that collectively govern a DoD Component's construction of the administrative requirements portion of

its general terms and conditions for awards to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes. The seven proposed new parts comprise a subchapter of the DoDGARs—Subchapter D in Chapter XI of 2 CFR.

The first of the proposed parts in the subchapter, 2 CFR part 1126, provides an overview of the subchapter's content. In addition to addressing the purpose and applicability, the overview part describes what the subchapter's remaining six parts address and how they are organized. Section II.B of this **SUPPLEMENTARY INFORMATION** section describes the overview part 1126 in more detail.

Each of the subchapter's other six parts provides both: (1) Standard wording for articles of general terms and conditions specifying requirements for recipients and subrecipients within a given subject matter area; and (2) the associated direction to DoD Components on the use of the standard wording for those articles. Those six parts are described more fully in sections II.C through II.H of this **SUPPLEMENTARY INFORMATION** section.

C. Costs and Benefits

The major benefit of this NPRM is greatly increased uniformity across the Department in administrative requirements included in DoD grant and cooperative agreement awards each year to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes. Uniformity helps to lessen administrative burdens and costs for recipients, thereby increasing the productivity of programs supported by DoD assistance awards. This regulatory action takes a major step in that direction by proposing to establish a standard organization and more uniform wording for administrative requirements included in general terms and conditions of more than 15,000 award actions totaling $4 to $6 billion each year that are issued:

- By approximately 100 offices in the Departments of the Army, Navy, and Air Force and 11 other DoD Components that are located across the United States and elsewhere.
- Under a variety of programs and to diverse types of recipients. Institutions of higher education receive more than half of the awards, including many awards that support defense research. There also are thousands of awards to other types of recipients and for other defense purposes, such as support to States for the National Guard and economic assistance to communities impacted by defense downsizing or costs associated with education of military dependents.

The administrative burdens and associated costs to recipients due to the regulatory action proposed in this NPRM are primarily those resulting from the Governmentwide guidance to agencies that OMB issued in 2 CFR part 200. Some variations from the guidance noted in sections II.C through II.H of this **SUPPLEMENTARY INFORMATION** section could cause a relatively small increase in burdens, while others reduce burdens and costs. The Department invites input on any area in which potential recipients of DoD awards perceive an increase in burden relative to the OMB guidance that is not justified by the commensurate value of an improvement in DoD's ability to carry out its responsibilities for good stewardship of Federal taxpayers' dollars.

II. General Background and Detailed Overview of the DoDGARs Parts Proposed in This NPRM

A. General Background

The first and second NPRMs in the sequence of six notices in this section of this issue of the **Federal Register** (*i.e.,* the two NPRMs preceding this one) provide additional context pertinent to the seven DoDGARs parts proposed in this NPRM. In particular, the NPRM immediately preceding this one proposes a new DoDGARs part that establishes a standard award format for DoD Components' grants and cooperative agreements. That format has three major elements, the third of which is the general terms and conditions that address administrative requirements, national policy requirements, and programmatic requirements.

This notice proposes seven DoDGARs parts that establish a standard organization and content for the administrative requirements portion of the general terms and conditions in awards to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes. Those are the types of recipient entities addressed by the OMB guidance to Federal agencies on administrative requirements, cost principles, and audit requirements that is in 2 CFR part 200. Therefore, the seven new DoDGARs parts proposed in this notice also comprise the proposed DoD implementation of that guidance as it applies to general terms and conditions.

The seven new parts proposed in this notice are in Subchapter D of Chapter XI in title 2 of the Code of Federal Regulations (note that the first of the six NPRMs in this section of this issue of the **Federal Register** proposed the establishment of that subchapter). The first of the parts proposed in this notice, 2 CFR part 1126, provides an overview of Subchapter D. Each of the other proposed parts (2 CFR parts 1128, 1130, 1132, 1134, 1136, and 1138) addresses the organization and content of general terms and conditions for one segment of the administrative requirements, such as property administration or recipient procurement procedures.

Each of the proposed parts 1128, 1130, 1132, 1134, 1136, and 1138 is organized into subparts and appendices. The appendix to each proposed part provides standard wording of general terms and conditions for one article of general terms and conditions. For each appendix addressing a particular article, the proposed part has an associated subpart that provides the prescription for DoD Components' use of the standard wording for that article. The subpart associated with each article identifies the portions of the OMB guidance in 2 CFR part 200 that the article implements, as those portions of the guidance apply to general terms and conditions. For example:

- Appendix D to the proposed 2 CFR part 1128 contains standard wording of an article of general terms and conditions addressing revisions of budget and program plans under awards; and
- The corresponding Subpart D of that proposed part: (1) Contains the prescription for DoD Components' use of the standard wording in appendix D when constructing that article of their general terms and conditions; and (2) in section 1128.400, lists the portions of the OMB guidance that the article implements.

Organizing the proposed parts 2 CFR 1128 through 1138 in that manner more clearly differentiates requirements for recipients from those for DoD awarding officials or administering officials than the DoDGARs have done previously. In the past, it was not unusual for a DoDGARs paragraph on administrative requirements to include requirements for both DoD Components and recipients, which made it more difficult for each intended audience to determine what the regulations required of them. For example, DoDGARs requirements on revisions to budget and program plans for both DoD Components and institutions of higher education or nonprofit recipients were interwoven in section 32.25 of 32 CFR part 32 (the now-superseded DoD implementation of OMB Circular A–110). With the organization of the content in the proposed parts 2 CFR 1128 through 1138, requirements for DoD Component

officials are in the subparts of the parts and therefore separate from requirements for recipients, which are communicated through award terms and conditions based on the standard wording in the appendices to the parts. That organization should make it easier for all affected parties to understand the applicable requirements and, therefore, to comply with them.

Three other features of the proposed parts with standard wording of general terms and conditions are designed to further promote ease of understanding for those who need to use and comply with them.

• The proposed standard wording is in plain language, with use of personal pronouns such as ''you'' to denote the recipient and ''we'' to mean the Federal Government. Use of personal pronouns is a recognized means to help a reader better relate to words addressed to him or her and, in the case of regulations, more likely understand his or her responsibilities.

• The proposed organization of administrative requirements reflects a conscious attempt to promote clarity by grouping requirements into 39 articles of general terms and conditions that present the subject matter in the most coherent manner possible. For example, the consolidation of requirements related to subawards in twelve articles within the proposed 2 CFR part 1138 is intended to simplify a recipient's task of determining which requirements of the prime award flow down to subrecipients.

• The proposed establishment of the standard wording in the appendices to parts in the Code of Federal Regulations enables a DoD Component to construct the administrative requirements portion of its general terms and conditions by: (1) Incorporating the standard wording of each article by reference; and (2) stating any variations it has from the standard wording of that article. Section 1120.515 in the proposed 2 CFR part 1120—the part that establishes a standard award format (see the NPRM immediately preceding this one in this section of this issue of the **Federal Register**)—strongly encourages DoD Components to use this method in their general terms and conditions, rather than including the full text of each article. Incorporating the standard wording by reference to the CFR should allow a recipient that receives awards from multiple DoD Component awarding offices to quickly identify how each office's general terms and conditions vary from the DoD standard wording.

It should be noted that the seven parts proposed in this NPRM do not address administrative requirements for DoD Components' fixed-amount awards, as described in OMB guidance at 2 CFR 200.201. Fixed-amount DoD awards will be addressed by DoDGARs rules to be proposed in the future. To the extent that DoD Components permit recipients or subrecipients to make fixed-amount subawards at lower tiers below cost-type prime awards and subawards, however, the proposed 2 CFR part 1138 includes requirements for those fixed-amount subawards (an overview of that proposed part is in section II.H of this **SUPPLEMENTARY INFORMATION** section).

The remainder of this **SUPPLEMENTARY INFORMATION** section provides overviews of the seven new DoDGARs parts proposed in this NPRM. Specifically, sections II.B through H address the proposed 2 CFR parts 1126 through 1138, respectively.

B. Proposed Part 1126—Subchapter D Overview

The proposed 2 CFR part 1126 provides an overview of Subchapter D of chapter XI, title 2 of the CFR. Specifically, it:

• Provides general information about the purposes of the subchapter.

• Specifies the applicability of the subchapter. It states that the subchapter: (1) Directly applies to DoD Components; and (2) only indirectly applies to recipients through its regulation of DoD Components' construction of the administrative requirements portion of their general terms and conditions for cost-type grant and cooperative agreement awards to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes.

• Specifies the conditions under which exceptions from the provisions of the subchapter are permitted. The only provision that varies from the conditions for exceptions included in OMB guidance to agencies, at 2 CFR 200.102, is a provision allowing exceptions for small awards. This continues a policy included in DoD's interim implementation of the OMB guidance at 2 CFR part 1103, which it published in the **Federal Register** on December 19, 2014 [79 FR 76047], and broadens it to include small awards to States, local governments, and Indian tribes.

• Acknowledges the complementary relationship between the parts of the subchapter and two other DoDGARs parts that specify administrative requirements for grant and cooperative agreement awards to for-profit entities and for Technology Investment Agreements.

• Provides, in the proposed section 1126.5, a table showing a high-level summary of the contents of the other six parts of the subchapter. The table lists each article of the administrative requirements portion of the general terms and conditions that is addressed in the subchapter.

• Describes how each of the other six parts of the subchapter is organized.

C. Proposed Part 1128—General Terms and Conditions on Financial and Program Management

The proposed part 1128 addresses seven articles of general terms and conditions within the broad area of financial and program management. The seven articles are designated as FMS Articles I through VII of the general terms and conditions. The proposed standard wording for the articles is in the seven appendices to the proposed part 1128. The prescriptions to DoD Components for use of the standard wording of the articles are in the seven associated subparts of the part. The articles with their related prescriptions implement the financial and program management provisions of the OMB guidance in 2 CFR part 200, as that guidance applies to general award terms and conditions. The subjects covered by the seven articles (and the appendices and subparts containing the articles and associated prescriptions) are:

• Financial management system standards (in Subpart A and appendix A).

• Payments (in Subpart B and appendix B).

• Allowable costs, period of availability of funds, and fee or profit (in Subpart C and appendix C).

• Revision of budget and program plans (in Subpart D and appendix D).

• Non-Federal audits (in Subpart E and appendix E).

• Cost sharing or matching (in Subpart F and appendix F).

• Program income (in Subpart G and appendix G).

The following subsections II.C.1 through 7 of this **SUPPLEMENTARY INFORMATION** section focus on whether and how the proposed implementation of the OMB guidance in each article and its associated prescription for DoD Components varies from, or clarifies, the related guidance.

1. Financial Management System Standards

The proposed FMS Article I, ''Financial management system standards,'' and associated prescription includes no variations or clarifications relative to the portions of the OMB

guidance on financial management systems standards.

2. Payments

The proposed FMS Article II, ''Payments,'' and associated prescription include one variation and one clarification relative to the guidance on payments:

• The variation is relative to OMB guidance at 2 CFR 200.305(b)(3), which concerns the timing of awarding agency payments to recipients. The OMB guidance states that an awarding agency must make payment within 30 calendar days after receipt of the billing, unless the agency reasonably believes the request to be improper. The proposed prescription for DoD Components in 2 CFR 1128.215(c)(4) implements that guidance for general terms and conditions of construction awards that specify reimbursement as the payment method. That proposed prescription states that DoD generally makes, rather than ''must'' make, payment within 30 calendar days after receipt of the request. This continues existing DoD policy for awards to institutions of higher education and nonprofit organizations, which is cited at 2 CFR 1103.205 in DoD's interim implementation of the OMB guidance, and broadens the policy to States, local governments, and Indian tribes. Note that this proposed wording in FMS Article II is limited to the general terms and conditions of construction awards. For non-construction awards, the reimbursement method should be used only in award-specific terms and conditions because the general terms and conditions of those awards authorize recipients to request advance payments as long as they maintain, or demonstrate the willingness to maintain, written procedures to minimize the time elapsing between their receipt of each payment and disbursement of the funds for program purposes.

• The clarification relates to OMB guidance in 2 CFR 200.305(b)(9), which states that a recipient may retain up to $500 per year in interest it earns on advance payments. The proposed paragraph B.6.d of FMS Article II, clarifies that the $500 limit applies to the aggregate amount of interest a recipient earns annually under all of its Federal grants and cooperative agreements and not separately to the amount it earns under each award.

3. Allowable Costs, Period of Availability of Funds, and Fee or Profit

The proposed FMS Article III, ''Allowable costs,'' and associated prescription supplement the OMB guidance, as well as implement it, by providing a central source within the general terms and conditions for requirements on whether and when costs incurred by recipients, subrecipients, and contractors under awards and subawards are allowable. It also includes the long-standing DoDGARs policy on fee or profit. The proposed article includes one variation and two clarifications relative to the OMB guidance in 2 CFR 200.461 on the allowability of costs associated with professional journal publications:

• The variation is a specification in Section B of FMS Article III that costs of publishing in professional journals are allowable only if the recipient charges them consistently, either as direct or indirect costs. The purpose of this specification is to ensure that the Government does not pay more than its fair share of journal publication costs that are increasingly being addressed through charges that authors pay prior to publication. That can happen if an institution directly charges those payments for federally supported researchers to their Federal awards while including payments by other researchers in a pool of costs, a share of which the Government reimburses as indirect costs charged to Federal awards.

• The first clarification also is in Section B of the article and is intended to help avoid confusion that might result from the use of the wording ''cost of publication or sharing of research results'' in 2 CFR 200.461(b)(3). That wording could be interpreted to mean something broader than ''charges for professional journal publications,'' which is the wording in the lead-in 2 CFR 200.461(b) that should circumscribe the costs allowed under § 200.461(b)(3).

• The other clarification is in paragraph C.3 of FMS Article III. It clarifies wording in 2 CFR 200.461(b)(3) indicating that a recipient may charge an award up to the time of closeout of the award for costs of publishing in professional journals that are incurred after the end of the period of performance. The proposed clarification provides that the recipient may charge those costs to an award if its request for payment of the costs is received no later than the date on which it submits its final financial report under the award. That clarification is needed because the closeout process relies on the final financial report being the ultimate statement of financial status. Any subsequent change in financial status due to incurrence of additional publication costs would disrupt the ongoing closeout process and create added burdens and costs for DoD's award administration office, which would have to require the recipient to submit a revised final report.

4. Revision of Budget and Program Plans

The proposed FMS Article IV, ''Revision of budget and program plans,'' and associated prescription include no variations or clarifications relative to the guidance on changes in a recipient's budget and program plans.

5. Non-Federal Audits

The proposed FMS Article V, ''Non-Federal audits,'' and associated prescription supplement, as well as implement, the OMB guidance by providing a central location within the general terms and conditions at which a recipient can find requirements for non-Federal audits of all types of recipients and subrecipients, including for-profit entities. The proposed article and prescription include no variations or clarifications relative to portions of the OMB guidance that they implement.

6. Cost Sharing or Matching

The proposed FMS Article VI, ''Cost sharing or matching,'' and associated prescription include no variations or clarifications relative to the OMB guidance on cost sharing or matching. Paragraph E.2 of the proposed article does refer to a clarification contained in another article of the general terms and conditions, PROP Article I. That clarification, which concerns the Federal interest in property donated to a project under an award, is addressed in the discussion of PROP Article I in subsection II.D.1 of this **SUPPLEMENTARY INFORMATION** section.

7. Program Income

The prescription for DoD Components related to FMS Article VII, ''Program Income,'' which is in subpart G of the proposed 2 CFR part 1128, includes one clarification from the OMB guidance in 2 CFR part 200. The prescription permits a DoD Component's general terms and conditions to specify a combination of the three alternatives that the OMB guidance identifies for recipients' use of program income—*i.e.,* the additive, deductive, and cost sharing or matching alternatives. This is a clarification because the guidance in 2 CFR part 200 does not explicitly recognize that an award may use more than one of the three alternatives. This clarification provides continuity with previous Governmentwide and DoD policy that permitted use of more than one alternative. Specifically, use of a combination of alternatives was allowed for awards to:

- Institutions of higher education and other nonprofit organizations under OMB Circular A–110 and the associated DoD implementation in DoDGARs part 32 (32 CFR part 32).
- States, local governments, and Indian tribes under the Governmentwide common rule implementing OMB Circular A–102, which was adopted by DoD in DoDGARs part 33 (32 CFR part 33).

D. Proposed Part 1130—General Terms and Conditions on Property Administration

The proposed part 1130 addresses six articles of general terms and conditions concerning property acquired by recipients under awards and federally owned property furnished to recipients by the Government. The articles are designated as PROP Articles I through VI of the general terms and conditions. The proposed standard wording for the articles is in appendices A through F to the proposed part. The prescriptions for DoD Components' use of the standard wording is in the associated Subparts A through F of the proposed part. The articles with their related prescriptions implement the property administration provisions of the OMB guidance in 2 CFR part 200, as that guidance pertains to general award terms and conditions. The subjects covered by the six articles (and the appendices and subparts containing the articles and associated prescriptions) are:

- Title to property (in Subpart A and appendix A)
- Recipients' property management systems (in Subpart B and appendix B)
- Use and disposition of real property (in Subpart C and appendix C)
- Use and disposition of equipment and supplies (in Subpart D and appendix D)
- Use and disposition of federally owned property (in Subpart E and appendix E)
- Intangible property (in Subpart F and appendix F)

The following subsections II.D.1 through 6 of this **SUPPLEMENTARY INFORMATION** section focus on whether and how the proposed implementation of the guidance in each article and its associated prescription for DoD Components varies from, or clarifies, the related OMB guidance.

1. Title to Property

The proposed PROP Article I, ''Title to property,'' and associated prescription implement portions of the OMB guidance that address title vesting and the property trust relationship. They implement the guidance with no variations.

2. Property Management System

The proposed PROP Article II, ''Property management system,'' and associated prescription implement portions of the OMB guidance that specify the standards for a recipient's property management system. The proposed implementation includes one variation from the guidance.

The one variation is the inclusion of property management system requirements for federally owned property. Although the OMB guidance in 2 CFR part 200 does not explicitly address those management system requirements, they are needed to ensure proper stewardship of any federally owned property for which a recipient is accountable under an award. The requirements are included for States in Section B of the proposed PROP Article II and for institutions of higher education, nonprofit organizations, local governments, and Indian tribes in Section C of the proposed article. The requirements in the proposed PROP Article II continue long-standing DoD policy in the DoDGARs, for States under 32 CFR 33.32(f) and for other recipients under 32 CFR 32.34(f). Those requirements also were included at 2 CFR 1103.201 in the interim DoD implementation of the guidance in 2 CFR part 200.

3. Use and Disposition of Real Property

The proposed PROP Article III, ''Use and disposition of real property,'' and associated prescription implement the portions of the OMB guidance pertinent to that subject. The proposed implementation includes one variation from the guidance.

The variation is that the proposed article authorizes a recipient's use of real property acquired under an award for other projects or programs either: (1) During its use on the project or program for which it was acquired, on a non-interfering basis; or (2) subsequently, by deferral of final disposition of the property, if the recipient obtains DoD approval for use on other federally sponsored projects or programs with purposes consistent with those supported by the award. The use on a non-interfering basis during the performance period of the award parallels provisions in the OMB guidance at 2 CFR 200.313(c)(2) for equipment acquired under an award. The potential to use real property after the end of the performance period continues long-standing policy in the DoDGARs at 32 CFR 32.32(b) for awards to institutions of higher education, hospitals, and other nonprofit organizations and extends that policy to States, local governments, and Indian tribes.

4. Use and Disposition of Equipment and Supplies

The proposed PROP Article IV, ''Use and disposition of equipment and supplies,'' and associated prescription implement the portions of the OMB guidance on that subject. The proposed implementation includes one variation from the guidance.

5. Use and Disposition of Federally Owned Property

The proposed PROP Article V, ''Use and disposition of federally owned property,'' and associated prescription implement the OMB guidance on that subject, with no variations or clarifications relative to the guidance.

6. Intangible Property

The proposed PROP Article VI, ''Intangible property,'' and associated prescription implement the provisions of the OMB guidance that address copyrights, inventions, and data. The proposed implementation includes one clarification of the guidance.

The one clarification, which is in Section D of the proposed article, relates to a patent, patent application, copyright, or other intangible property that is acquired under an award by a means other than being developed or produced under the award. This is an important distinction because policies concerning vesting of title to the property and use and disposition of the property appropriately differ from the corresponding policies for intangible property that is developed or produced under awards. This distinction was previously made in the DoDGARs at 32 CFR 32.36(e) for awards to institutions of higher education, hospitals, and other nonprofit organizations, and was included for awards to those types of recipients in DoD's interim implementation of the OMB guidance at 2 CFR 1103.215. The incorporation into PROP Article VI extends the distinction to awards DoD Components make to States, local governments, and Indian tribes.

E. Proposed Part 1132—General Terms and Conditions on Recipient Procurement Procedures

The proposed part 1132 addresses three articles of general terms and conditions specifying procedural requirements for recipients' purchases of property and services under awards. The articles, which are designated as PROC Articles I through III, are in

appendices A through C to the proposed part. The prescriptions for DoD Components' use of the standard wording of the articles are in the corresponding Subparts A through C of the proposed part. The articles and the associated prescriptions implement the procurement provisions of the OMB guidance in 2 CFR part 200 as they relate to general award terms and conditions. The subjects covered by the articles (and the appendices and subparts containing the articles and associated prescriptions) are:

- Procurement standards for States (in Subpart A and appendix A)
- Procurement standards for institutions of higher education, nonprofit organizations, local governments, and Indian tribes (in Subpart B and appendix B)
- Contract provisions for recipient procurements (in Subpart C and appendix C)

The following subsections II.E.1 through 3 of this **SUPPLEMENTARY INFORMATION** section address whether and how the proposed implementation of the guidance in each article and its associated prescription for DoD Components varies from, or clarifies, the related OMB guidance.

1. Procurement Standards for States

The proposed PROC Article I, ''Procurement standards for States,'' and the associated prescription implement the OMB guidance on those standards, with no variations or clarifications relative to the guidance.

2. Procurement Standards for Institutions of Higher Education, Nonprofit Organizations, Local Governments, and Indian Tribes

The proposed PROC Article II, ''Procurement standards for institutions of higher education, nonprofit organizations, local governments, and Indian tribes,'' and the associated prescription implement the OMB guidance on those standards, with no clarifications or variations relative to the guidance.

3. Contract Provisions for Recipient Procurements

The proposed PROC Article III, ''Contract provisions for recipient procurements,'' and the associated prescription implement the OMB guidance on that subject, with no variations or clarifications relative to the guidance.

F. Proposed Part 1134—General Terms and Conditions on Reporting

The proposed part 1134 addresses four articles of general terms and conditions on recipient reporting requirements. The articles are designated as REP Articles I through IV and are in appendices A through D to the proposed part. The associated prescriptions for DoD Components are in Subparts A through D of the proposed part. The articles and associated prescriptions implement the provisions of the OMB guidance in 2 CFR part 200 on reporting, as those provisions relate to general award terms and conditions. The subjects covered by the articles (and the appendices and subparts containing the articles and associated prescriptions) are:

- Performance management, monitoring, and reporting (in Subpart A and appendix A)
- Financial reporting (in Subpart B and appendix B)
- Reporting on property (in Subpart C and appendix C)
- Reporting on subawards and executive compensation (in Subpart D and appendix D)

The following subsections II.F.1 through 4 of this Supplementary Information section address whether and how the proposed implementation of the guidance in each article and its associated prescription for DoD Components varies from, or clarifies, the related OMB guidance.

1. Performance Management, Monitoring, and Reporting

The proposed REP Article I, ''Performance management, monitoring, and reporting,'' implements portions of the OMB guidance pertinent to that subject. It does so with no variations or clarifications relative to the guidance.

2. Financial Reporting

The proposed REP Article II, ''Financial reporting,'' implements the OMB guidance on that subject, with one clarification. That clarification is in Section D of the proposed article and the related prescription for DoD Components. Section D authorizes recipients to request extensions of due dates for interim and final financial reports. That authorization continues long-standing DoD policy in: (1) The DoDGARs at 32 CFR 32.52(a) and underlying provisions of OMB Circular A–110 for awards to institutions of higher education, hospitals, and other nonprofit organizations; and (2) the DoDGARs at 32 CFR 33.41(a)(7) and the underlying Governmentwide common rule for awards to States, local governments, and Indian tribes.

3. Property Reporting

The proposed REP Article III, ''Property reporting,'' provides a single location within the general terms and conditions at which a recipient may find all of the property reporting requirements listed. With its associated prescription, it implements portions of the OMB guidance concerning property reporting that are not implemented in other articles of the general terms and conditions. For the reporting requirements that are addressed in other articles, the proposed REP Article III includes references to those articles rather than restating the requirements. The proposed article and prescription include no variations or clarifications relative to the guidance.

4. Reporting on Subawards and Executive Compensation

The proposed REP Article IV, ''Reporting on subawards and executive compensation,'' directly implements the Governmentwide guidance in 2 CFR part 170 that is based on statutory reporting requirements in the Federal Funding Accountability and Transparency Act, as amended. The proposed article also implements portions of the OMB guidance in 2 CFR part 200 that cite those statutory requirements and 2 CFR part 170. The proposed article includes no variations or clarifications relative to the guidance it implements.

G. Proposed Part 1136—General Terms and Conditions on Other Administrative Requirements

The proposed part 1136 addresses seven articles of general terms and conditions. The seven articles specify the recipients' and Government's rights and responsibilities in areas of administrative requirements other than financial and program management, property administration, recipient procurement procedures, and reporting (which are the four areas addressed in the proposed parts 1128, 1130, 1132, and 1134 and discussed in sections II.C through F of this **SUPPLEMENTARY INFORMATION** section). The articles and associated prescriptions for DoD Components implement the OMB guidance in 2 CFR part 200 in these other areas of administrative requirements, as the guidance relates to general award terms and conditions.

The articles are designated as OAR Articles I through VII and are in appendices A through G to the proposed part. The associated prescriptions are in Subparts A through G of the proposed part. The subjects covered by the articles (and the appendices and subparts containing the articles and associated prescriptions) are:

- Submitting and maintaining recipient information (in Subpart A and appendix A)
- Records retention and access (in Subpart B and appendix B)
- Remedies and termination (in Subpart C and appendix C)
- Claims, disputes, and appeals (in Subpart D and appendix D)
- Collection of amounts due (in Subpart E and appendix E)
- Closeout (in Subpart F and appendix F)
- Post-closeout adjustments and continuing responsibilities (in Subpart G and appendix G)

The following subsections II.G.1 through 7 of this **SUPPLEMENTARY INFORMATION** section address whether and how the proposed implementation of the guidance in each article and its associated prescription for DoD Components varies from, or clarifies, the related OMB guidance.

1. Submitting and Maintaining Recipient Information

The proposed OAR Article I, ''Submitting and maintaining recipient information,'' and related prescription for DoD Components addresses requirements to register in the System for Award Management, report information to the Federal Awardee Performance and Integrity Information System (FAPIIS), and disclose evidence of certain integrity-related matters to the DoD Inspector General. It thereby implements OMB guidance in 2 CFR part 25, 2 CFR 200.113, and 200.210(b)(1)(iii). The article includes one clarification of the guidance.

The clarification concerns the guidance in 2 CFR 200.113 that relates to mandatory disclosures of certain violations of Federal criminal law. The proposed implementation in Section C of OAR Article I provides more specifics than the OMB guidance—*e.g.,* by specifying transmission of the information to the DoD Inspector General's office and grants officer and providing assurances about the safeguarding of the information provided to the Government.

2. Records Retention and Access

The proposed OAR Article II, ''Records retention and access,'' and associated prescription for DoD Components implement the OMB guidance on that subject in 2 CFR part 200. They do so with two clarifications.

The first clarification concerns the period during which the Government may disallow costs and recover funds on the basis of an audit or other review of a recipient. The three portions of the OMB guidance in 2 CFR part 200 pertinent to this clarification are in: (1) 2 CFR 200.333(b) on records retention requirements, which states that an agency may extend the records retention period by notifying the recipient in writing; (2) 2 CFR 200.336(c), which states that the Government's right to access records is not limited to the records retention period but lasts as long as the recipient retains the records; and (3) 2 CFR 200.344 on post-closeout adjustments, which states that an agency must make any cost disallowance determination and notify the recipient within the record retention period. To conform the period during which DoD may disallow costs with the period during which it may access the recipient's records, the proposed OAR Article II specifies that the recipient is not required to retain records beyond the standard records retention period delineated in 2 CFR 200.333 but, if it elects to do so, the records retention period for purposes of post-closeout adjustments is extended to be the same as the period during which the records are retained. This provision in OAR Article II thereby provides the written notification to recipients that is described in 2 CFR 200.333(b).

The second clarification concerns the retention period for records concerning exempt property. The clarification, which is in paragraph A.1 of the proposed article, is that the recipient must keep whatever property records it needs to keep for exempt property acquired under a DoD award, for as long as it needs to keep them, to ensure that any residual Federal share of the value of that property is not later used as a contribution toward cost sharing or matching requirements of another Federal award.

3. Remedies and Termination

The proposed OAR Article III, ''Remedies and termination,'' and related prescription for DoD Components implement the OMB guidance on that subject in 2 CFR part 200. The article and prescription include one variation from, and two clarifications of, the guidance.

The one variation is with respect to OMB guidance in 2 CFR 200.342 that describes the conditions under which costs incurred during a suspension or after a termination are allowable. To avoid potential confusion, Section C segregates the implementation of the guidance into two paragraphs: (1) Paragraph C.1, to address costs resulting from obligations incurred by a recipient before the effective date of the suspension or termination; and (2) paragraph C.2, to address costs resulting from obligations incurred after that effective date. Paragraph C.1 includes one condition not explicitly stated in the OMB guidance, which is that costs resulting from obligations incurred before the date of a termination are allowable only if they are noncancellable after the termination. This will provide good stewardship of Federal funds by restoring a long-standing DoDGARs requirement for allowability of costs in the case of termination, previously in 32 CFR 32.62(c) for awards to institutions of higher education, hospitals, and other nonprofit organizations, and in 32 CFR 33.43(c) for awards to States, local governments, and Indian tribes.

The two clarifications are with respect to OMB guidance in:

- 2 CFR 200.339(a)(1), which specifies that a Federal agency may unilaterally terminate an award based on a recipient's failure to comply with award terms and conditions. To make clear that there must be an adequate reason for a DoD Component to unilaterally terminate an award, which is a serious remedy, paragraph B.1.a of the proposed article affirms that the DoD standard is a recipient's ''material'' failure to comply with award terms and conditions.
- 2 CFR 200.339(a)(2), which adds termination for cause as a basis for unilateral termination of an award by the Government. For added clarity, since ''termination for cause'' is not defined and likely would be interpreted by DoD officials to be the same as termination for default (*i.e.,* material failure to comply with award terms and conditions), paragraph B.1.a of the proposed article describes that added basis for a DoD Component's unilateral termination in plain language.

4. Claims, Disputes, and Appeals

The proposed OAR Article IV, ''Claims, disputes and appeals,'' and associated prescription for DoD Components implement existing DoDGARs requirements in 32 CFR 22.810. They also implement the OMB guidance in 2 CFR 200.341 on recipients' opportunities to object to remedies taken for non-compliance. The article and prescription do so with no variations or clarifications relative to the guidance.

5. Collection of Amounts Due

The proposed OAR Article V, ''Collection of amounts due,'' and related prescription for DoD Components implement the OMB guidance on that subject, which is in 2 CFR 200.345. The article does not vary from the guidance but does clarify that the existing DoDGARs procedures in 32

CFR 22.820 for issuing demands for payment and transferring debts for collection continue to apply. That same clarification is stated at 2 CFR 1103.225 in DoD's interim implementation of the OMB guidance in 2 CFR part 200.

6. Closeout

The proposed OAR Article VI, ''Closeout,'' implements the OMB guidance on that subject. The article includes no variations or clarifications relative to the guidance.

7. Post-closeout Adjustments and Continuing Responsibilities

The proposed OAR Article VII, ''Post-closeout adjustments and continuing responsibilities,'' and associated prescription for DoD Components implement the OMB guidance on that subject. It does so with no variations or clarifications relative to the guidance.

H. Proposed Part 1138—General Terms and Conditions on Requirements Related to Subawards

The proposed part 1138 addresses twelve articles of general terms and conditions related to subawards that institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes make to all types of subrecipient entities under DoD Components' grants and cooperative agreements. The articles and associated prescriptions for DoD Components implement the OMB guidance in 2 CFR part 200 concerning subawards, as that guidance relates to general terms and conditions.

The articles are designated as SUB Articles I through XII and are in appendices A through L to the proposed part. The associated prescriptions are in Subparts A through L of the proposed part. The subjects covered by the articles (and the appendices and subparts containing the articles and associated prescriptions) are:

- Distinguishing subawards and procurements (in Subpart A and appendix A)
- Pre-award and time of award responsibilities (in Subpart B and appendix B)
- Informational content of subawards (in Subpart C and appendix C)
- Financial and program management requirements for subawards (in Subpart D and appendix D)
- Property requirements for subawards (in Subpart E and appendix E)
- Procurement procedures to include in subawards (in Subpart F and appendix F)
- Financial, programmatic, and property reporting requirements for subawards (in Subpart G and appendix G)
- Other administrative requirements for subawards (in Subpart H and appendix H)
- National policy requirements for subawards (in Subpart I and appendix I)
- Subrecipient monitoring and other post-award administration (in Subpart J and appendix J)
- Requirements concerning subrecipients' lower-tier subawards (in Subpart K and appendix K)
- Fixed-amount subawards (in Subpart L and appendix L)

The following subsections II.H.1 through 12 describe these twelve articles and each instance in which an article or its associated prescription for DoD Components varies from, or clarifies, the related OMB guidance in a way not already described in sections II.C through II.G of this **SUPPLEMENTARY INFORMATION** section. The reason that some variations and clarifications already were described in sections II.C through II.G is that SUB Articles IV through VIII address the administrative requirements that recipients are to include in their subaward terms and conditions. In doing so, SUB Articles IV through VIII often instruct recipients to flow down to subrecipients the same administrative requirement that applies to recipients, which therefore is in one of the 27 articles of general terms and conditions described in sections II.C through II.G of this **SUPPLEMENTARY INFORMATION** section. For any of those articles that varies from or clarifies the OMB guidance, that variation or clarification is described in sections II.C through II.G and will not be described again in the following subsections II.H.1 through 12.

1. Distinguishing Subawards and Procurements

The proposed SUB Article I, ''Distinguishing subawards and procurements,'' addresses the need for a recipient to determine the nature of each transaction into which it enters at the next lower tier under its award.

2. Pre-award and Time of Award Responsibilities

The proposed SUB Article II, ''Pre-award and time of award responsibilities,'' and associated prescription for DoD Components include no variations or clarifications relative to the pertinent portions of the OMB guidance.

3. Informational Content of Subawards

The proposed SUB Article III, ''Informational content of subawards,'' and the related prescription for DoD Components include one variation relative to the OMB guidance. The variation is from the guidance in 2 CFR 200.331(a)(1)(xiii) that provides for the recipient's inclusion of the subrecipient's indirect cost rate as an information element in every subaward. Because many nonprofit and for-profit entities deem their indirect cost rates to be proprietary, in order to protect confidential business information, the proposed SUB Article III varies from the guidance by providing flexibility for a recipient in that situation to exclude information about the subrecipient's indirect cost rate from the subaward.

4. Financial and Program Management Requirements for Subawards

The proposed SUB Article IV, ''Financial and program management requirements for subawards,'' addresses the types of administrative requirements for subawards that FMS Articles I through VII address for awards under which the subawards are made.

5. Property Requirements for Subawards

The proposed SUB Article V, ''Property requirements for subawards,'' covers the property administration requirements for subawards that PROP Articles I through VI cover for awards under which the subawards are made. SUB Article V and the related prescription for DoD Components include one clarification relative to the OMB guidance that sections II.D.1 through 6 of this **SUPPLEMENTARY INFORMATION** section did not already describe. The added clarification is that a subrecipient would submit a request for property disposition instructions through the recipient, and not directly to DoD as a recipient would do.

6. Procurement Procedures To Include in Subawards

The proposed SUB Article VI, ''Procurement procedures to include in subawards,'' addresses the types of administrative requirements for subawards that PROC Articles I through III address for awards under which the subawards are made. SUB Article VI and the associated prescription for DoD Components include no variations or clarifications relative to the OMB guidance that sections II.E.1 through 3 of this **SUPPLEMENTARY INFORMATION** section did not already describe.

7. Financial, Programmatic, and Property Reporting Requirements for Subawards

The proposed SUB Article VII, ''Financial, programmatic, and property reporting requirements for subawards,''

covers the types of reporting for subawards that REP Articles I through IV cover for awards under which the subawards are made. SUB Article VII and the related prescription for DoD Components include no variations or clarifications relative to the OMB guidance that sections II.F.1 through 4 of this **SUPPLEMENTARY INFORMATION** section did not already describe.

8. Other Administrative Requirements for Subawards

The proposed SUB Article VIII, ''Other administrative requirements for subawards,'' covers the administrative requirements for subawards that OAR Articles I through VII cover for awards under which the subawards are made. SUB Article VIII and the related prescription for DoD Components include no variations or clarifications relative to the OMB guidance.

9. National Policy Requirements for Subawards

The proposed SUB Article IX, ''National policy requirements for subawards,'' addresses the flow down to subawards of the requirements in NP Articles I–IV, which are addressed in the DoDGARs parts proposed in the NPRM following this one in this section of this issue of the **Federal Register**. SUB Article IX and the related prescription for DoD Components include two clarifications relative to the pertinent portions of the OMB guidance in 2 CFR part 200. The clarifications are that a recipient must immediately alert the DoD office administering its award if:

- An entity to which the recipient is about to make a subaward will not accept a subaward provision requiring the subrecipient's compliance with an applicable national policy requirement; or
- At any time during the performance of a subaward, the recipient learns that—or receives a credible allegation that—the subrecipient is not complying with an applicable national policy requirement.

10. Subrecipient Monitoring and Other Post-Award Administration

The proposed SUB Article X, ''Subrecipient monitoring and other post-award administration,'' addresses requirements for recipients' monitoring of subrecipients and related post-award administration of subawards that they make under DoD grants and cooperative agreements. SUB Article X and the related prescription for DoD Components include no variations or clarifications relative to the OMB guidance.

11. Requirements Concerning Subrecipients' Lower-Tier Subawards

The proposed SUB Article XI, ''Requirements concerning subrecipients' lower-tier subawards,'' specifies requirements that a recipient must include in any subaward in which it judges that the subrecipient may make lower-tier subawards. SUB Article XI and the associated prescription for DoD Components include no variations or clarifications relative to the OMB guidance that sections II.H.1 through 10 of this Supplementary Information section did not already address.

12. Fixed-Amount Subawards

The proposed SUB Article XII, ''Fixed-amount subawards,'' specifies policy and procedures concerning recipients' use of fixed-amount subawards under DoD grants and cooperative agreements. The article and associated prescription for DoD Components includes two variations relative to the OMB guidance concerning fixed-amount subawards. Specifically, SUB Article XII does not provide for:

- A subrecipient's certification to the recipient at the end of the subaward that it completed the project or activity or expended the level of effort, as described in the OMB guidance at 2 CFR 200.201(b)(3). A certification is not needed because the article defines appropriate uses of a fixed-amount subaward based on well-defined outcomes that are sufficiently observable and verifiable by the recipient so as to obviate the need to rely on a subrecipient's assurances. The article clarifies that outcomes are distinct from inputs, such as level of effort, needed to achieve the outcomes.
- The need for a recipient's prior approval for a change in the subrecipient's principal investigator or other project leader, as described in the OMB guidance at 2 CFR 200.201(b)(5). It is inappropriate to require prior approvals for changes in inputs, such as which individuals carry out the project or program, because the article links the appropriate use of fixed-amount subawards to well-defined outcomes.

III. Relationship of Administrative Requirements in This NPRM to Future DoD Implementation of the OMB Guidance

As noted in section III of the Supplementary Information section of the first of the NPRMs in this section of this issue of the **Federal Register**, DoD will complete the remaining needed updates of the DoDGARs in a subsequent set of proposals for public comment. That future set of proposals will include implementation of the OMB guidance on administrative requirements in 2 CFR part 200 as it applies to both: (1) award-specific terms and conditions of DoD Components' grants and cooperative agreements; and (2) post-award administration. Those future proposals will complement the proposed DoDGARs parts 1128 through 1138 in this NPRM, which implement the guidance on administrative requirements as it applies to general award terms and conditions.

The reason for these separate implementations is that they address distinct audiences at different points during the award life cycle. The implementation in this NPRM addresses an individual in a DoD awarding office who is responsible for drafting general terms and conditions to be used in the office's many future awards under one or more programs with similar requirements (*e.g.,* its research programs or its training programs). In contrast, the implementations of the guidance as it applies to:

- Award-specific terms and conditions will address awarding officials in that awarding office who will later be making the individual awards under the programs. The portions of the DoDGARs addressing those officials must be tailored to their responsibilities, which include considering the specific circumstances of each award before deciding which, if any, provisions in the general terms and conditions need to be supplemented or even overridden by terms and conditions specific to that award.
- Post-award administration will address officials responsible for subsequently administering the awards. In DoD, those officials often are located in offices specifically designated to provide award administration services that are organizationally and physically separate from the awarding offices. The officials' responsibilities differ in kind and not just in degree from those of the awarding officials. Again, the portions of the DoDGARs addressing those officials needs to be tailored to their distinct responsibilities.

Segregating the DoDGARs implementation of the guidance for these three sets of DoD officials enables the regulations to more clearly address each of the different audiences. Doing so makes it easier for each audience to understand what the regulations require of them, and thereby promotes compliance.

IV. Desired Inputs

DoD welcomes comments on all aspects of the seven proposed parts in

this NPRM, as inputs from affected entities will help make the final regulations better. Questions on which commenters' inputs would be helpful include:

• Do the seven proposed parts appear to include any substantive variations from the OMB guidance in 2 CFR part 200, as that guidance applies to general award terms and conditions—other than those noted in section II of this Supplementary Information section?

• In each of the proposed parts 1128 through 1138, does the separation of administrative requirements into two portions—*i.e.,* the wording of terms and conditions for recipients in the appendices to the part and the prescriptions for DoD Components in the corresponding subparts of the part—help make requirements clearer for affected parties?

• Does the use of plain language and pronouns improve the readability and understandability of the content of the proposed parts?

V. Regulatory Analysis

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

Executive Order 12866, as supplemented by Executive Order 13563, directs each Federal agency to: propose regulations only after determining that benefits justify costs; tailor regulations to minimize burdens on society, consistent with achieving regulatory objectives; maximize net benefits when selecting among regulatory approaches; specify performance objectives, to the extent feasible, rather than the behavior or manner of compliance; and seek the views of those likely to be affected before issuing a notice of proposed rulemaking, where feasible and appropriate. The Department of Defense has determined that a regulatory implementation of 2 CFR part 200 that includes standard wording of general terms and conditions for DoD Components' grant and cooperative agreement awards will maximize long-term benefits in relation to costs and burdens for recipients of those awards. In providing—for the first time—uniformity across research and other awards, the approach will benefit institutions of higher education and other types of recipients that receive awards from diverse defense programs and numerous DoD Component awarding offices. The Department informally consulted representatives of the most affected recipient community during development of this regulatory proposal. This rule has been designated a ''significant regulatory action'' under section 3(f) of Executive Order 12866, although not an economically significant one. Accordingly, the rule has been reviewed by OMB.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) (2 U.S.C. 1532) requires that a Federal agency prepare a budgetary impact statement before issuing a rule that includes any Federal mandate that may result in the expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in 1995 dollars, updated annually for inflation. In 2015, that inflation-adjusted amount in current dollars is approximately $146 million. The Department of Defense has determined that this proposed regulatory action will not result in expenditures by State, local, and tribal governments, or by the private sector, of that amount or more in any one year.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires an agency that is proposing a rule to provide a regulatory flexibility analysis or to certify that the rule will not have a significant economic impact on a substantial number of small entities. The Department of Defense certifies that this proposed regulatory action will not have a significant economic impact on substantial number of small entities beyond any impact due to provisions of it that implement OMB guidance at 2 CFR part 200.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35; 5 CFR part 1320, appendix A.1) (PRA), the Department of Defense has determined that there are no new collections of information contained in this proposed regulatory action.

Executive Order 13132, ''Federalism''

Executive Order 13132 establishes certain requirements that an agency must meet when it proposes a regulation that has Federalism implications. This proposed regulatory action does not have any Federalism implications.

List of Subjects

2 CFR Part 1126

Cooperative agreements, Grant programs, Grants administration.

2 CFR Part 1128

Accounting, Business and Industry, Cooperative agreements, Grants administration, Hospitals, Indians, Nonprofit organizations, Reporting and recordkeeping requirements, Small business, State and local governments.

2 CFR Part 1130

Cooperative agreements, Grants administration, Hospitals, Indians, Nonprofit organizations, Reporting and recordkeeping requirements, Small business, State and local governments.

2 CFR Part 1132

Business and Industry, Cooperative agreements, Grants administration, Hospitals, Indians, Nonprofit organizations, Reporting and recordkeeping requirements, Small business, State and local governments.

2 CFR Part 1134

Cooperative agreements, Grants administration, Hospitals, Indians, Nonprofit organizations, Reporting and recordkeeping requirements, Small business, State and local governments.

2 CFR Part 1136

Cooperative agreements, Grants administration, Hospitals, Indians, Nonprofit organizations, Reporting and recordkeeping requirements, Small business, State and local governments.

2 CFR Part 1138

Accounting, Business and Industry, Cooperative agreements, Grants administration, Hospitals, Indians, Nonprofit organizations, Reporting and recordkeeping requirements, Small business, State and local governments.

■ Accordingly, under the authority of 5 U.S.C. 301 and 10 U.S.C. 113, 2 CFR chapter XI, subchapter D, is proposed to be amended by adding parts 1126, 1128, 1130, 1132, 1134, 1136, and 1138 to read as follows:

PART 1126—SUBCHAPTER D OVERVIEW

Sec.
1126.1 Purposes of this subchapter.
1126.2 Applicability of this subchapter.
1126.3 Exceptions from requirements in this subchapter.
1126.4 Relationship to other portions of the DoD grant and agreement regulations.
1126.5 Organization of this subchapter.
1126.6 Organization of the other parts of this subchapter.

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

§ 1126.1 Purposes of this subchapter.

This subchapter of the DoD Grant and Agreement Regulations:

(a) Addresses general terms and conditions governing administrative

requirements for DoD Components' cost-type grant and cooperative agreement awards to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes. It does so by providing:

(1) A standard organization of the administrative requirements into articles of general terms and conditions, each of which is in a specific subject area.

(2) Standard wording for those articles; and

(3) Associated prescriptions for DoD Component's use of the standard wording to construct their general terms and conditions, which allow for adding, omitting, or varying in other ways from the standard wording in certain situations.

(b) Thereby implements OMB guidance in 2 CFR part 200 as it relates to general terms and conditions of grant and cooperative agreement awards to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes.

§ 1126.2 Applicability of this subchapter.

(a) *Entities.* This subchapter:

(1) Applies to DoD Components that make cost-type grant and cooperative agreement awards to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes.

(2) Does not directly impose requirements on a recipient of a DoD Component's award but does do so indirectly, through the DoD Component's compliance with this subchapter when it constructs its general award terms and conditions. The terms and conditions delineate the rights and responsibilities of the recipient and the Federal Government under the award.

(b) *Awards.* This subchapter applies to DoD Components' cost-type grants and cooperative agreements to types of entities identified in paragraph (a)(1) of this section, other than Technology Investment Agreements that are addressed in 32 CFR part 37.

§ 1126.3 Exceptions from requirements in this subchapter.

(a) *Exceptions that are not permitted.* A DoD Component may not grant any exception to the requirements in this subchapter if the exception is:

(1) Prohibited by statute, executive order, or regulation;

(2) Inconsistent with the OMB implementation of the Single Audit Act in Subpart F of 2 CFR part 200.

(b) *Other exceptions.* Other exceptions are permitted from requirements in this subchapter for institutions of higher education, nonprofit organizations, States, local governments and Indian tribes, as follows:

(1) *Statutory or regulatory exceptions.* A DoD Component's general terms and conditions may incorporate a requirement that is inconsistent with the requirements in this subchapter if that requirement is specifically authorized or required by a statute or regulation adopted in the Code of Federal Regulations after opportunity for public comment.

(2) *Individual exceptions.* The Head of the DoD Component or his or her designee may approve an individual exception affecting only one award in accordance with procedures stated in 32 CFR 21.340.

(3) *Small awards.* DoD Components' terms and conditions for small awards may apply less restrictive requirements than those specified in this subchapter (a small award is an award for which the total value of obligated funding through the life of the award is not expected to exceed the simplified acquisition threshold).

(4) *Other class exceptions.* The Assistant Secretary of Defense for Research and Engineering or his or her designee may approve any class exception affecting multiple awards other than small awards, with OMB concurrence if the class exception is for a requirement that is inconsistent with OMB guidance in 2 CFR part 200. Procedures for DoD Components' requests for class exceptions are stated in 32 CFR 21.340.

§ 1126.4 Relationship to other portions of the DoD grant and agreement regulations.

The administrative requirements specified in this subchapter complement:

(1) Provisions of 32 CFR part 34 that address administrative requirements for DoD Components' grant and cooperative agreement awards to for-profit entities; and

(2) Requirements in 32 CFR part 37 for technology investment agreements.

§ 1126.5 Organization of this subchapter.

This subchapter is organized into six parts in addition to this overview part. Each part provides standard wording and prescriptions for a number of articles of general terms and conditions that address administrative requirements in a particular subject area. The following table shows the subject area and articles corresponding to each part:

In . . .	Of this subchapter, you will find terms and conditions with associated prescriptions for the following articles related to . . .
Part 1128	Recipient financial and program management (designated as ''FMS'' when referring to articles prescribed by this part): —FMS Article I—Financial management system standards. —FMS Article II—Payments. —FMS Article III—Allowable costs, period of availability of funds, and fee or profit. —FMS Article IV—Revision of budget and program plans. —FMS Article V—Non-Federal audits. —FMS Article VI—Cost sharing or matching. —FMS Article VII—Program income.
Part 1130	Property administration (designated as ''PROP'' when referring to articles prescribed by this part): —PROP Article I—Title to property. —PROP Article II—Property management system. —PROP Article III—Use and disposition of real property. —PROP Article IV—Use and disposition of equipment and supplies. —PROP Article V—Use and disposition of federally owned property. —PROP Article VI—Intangible property.
Part 1132	Recipient procurement procedures (designated as ''PROC'' when referring to articles prescribed by this part): —PROC Article I—Procurement standards for States. —PROC Article II—Procurement standards for institutions of higher education, nonprofit organizations, local governments, and Indian tribes. —PROC Article III—Contract provisions for recipient procurements.

In . . .	Of this subchapter, you will find terms and conditions with associated prescriptions for the following articles related to . . .
Part 1134	Financial, programmatic, and property reporting (designated as ''REP'' when referring to articles prescribed by this part): —REP Article I—Performance management, monitoring, and reporting. —REP Article II—Financial reporting. —REP Article III—Reporting on property. —REP Article IV—Reporting on subawards and executive compensation.
Part 1136	Other administrative requirements (designated as ''OAR'' when referring to articles prescribed by this part): —OAR Article I—Submitting and maintaining recipient information. —OAR Article II—Records retention and access. —OAR Article III—Remedies and termination. —OAR Article IV—Claims, disputes, and appeals. —OAR Article V—Collection of amounts due. —OAR Article VI—Closeout. —OAR Article VII—Post-closeout adjustments and continuing responsibilities.
Part 1138	Requirements related to subawards (designated as ''SUB'' when referring to articles prescribed by this part): —SUB Article I—Distinguishing subawards and procurements. —SUB Article II—Pre-award and time of award responsibilities. —SUB Article III—Informational content of subawards. —SUB Article IV—Financial and program management requirements for subawards. —SUB Article V—Property requirements for subawards. —SUB Article VI—Procurement procedures to include in subawards. —SUB Article VII—Financial, programmatic, and property reporting requirements for subawards. —SUB Article VIII—Other administrative requirements for subawards. —SUB Article IX—National Policy Requirements for Subawards. —SUB Article X—Subrecipient monitoring and other post-award administration. —SUB Article XI—Requirements concerning subrecipients' lower-tier subawards. —SUB Article XII—Fixed-amount subawards.

§ 1126.6 Organization of the other parts of this subchapter.

(a) Each of parts 1128 through 1138 of this subchapter is organized into a number of subparts and appendices.

(1) Each appendix provides the standard wording of general terms and conditions for one of the articles of general terms and conditions that the part addresses.

(2) For each appendix addressing a particular article, the part has an associated subpart that provides the prescription for DoD Components' use of the standard wording for that article.

(b) For example, the table in § 1126.5 indicates that 2 CFR part 1128 provides the standard wording of general terms and conditions for FMS Articles I through VII and the prescriptions for DoD Components' use of that standard wording.

(1) FMS Article I on financial management system standards is the first of the articles that 2 CFR part 1128 covers. Appendix A to 2 CFR part 1128 provides the standard wording of general terms and conditions for FMS Article I. The associated subpart of 2 CFR part 1128, subpart A, provides the prescription for DoD Components' use of the standard wording of that article.

(2) Appendices B through G of 2 CFR part 1128 provide the standard wording of general terms and conditions for FMS Articles II through VII, respectively. The associated subparts, subparts B through G, provide the corresponding prescriptions for DoD Components.

PART 1128—RECIPIENT FINANCIAL AND PROGRAM MANAGEMENT: GENERAL AWARD TERMS AND CONDITIONS

Sec.
1128.1 Purpose of this part.
1128.2 Applicability of this part.
1128.3 Exceptions from requirements of this part.
1128.4 Organization of this part.

Subpart A—Financial management system standards (FMS Article I)

1128.100 Purpose of FMS Article I.
1128.105 Content of FMS Article I.

Subpart B—Payments (FMS Article II)

1128.200 Purpose of FMS Article II.
1128.205 Content of FMS Article II.
1128.210 Payment requirements for States.
1128.215 Payment requirements for institutions of higher education, nonprofit organizations, local governments, and Indian tribes.
1128.220 Electronic funds transfer and other payment procedural instructions or information.

Subpart C—Allowable costs, period of availability of funds, and fee or profit (FMS Article III)

1128.300 Purpose of FMS Article III.
1128.305 Content of FMS Article III.
1128.310 Cost principles.
1128.315 Clarification concerning allowability of publication costs.
1128.320 Period of availability of funds.
1128.325 Fee or profit.

Subpart D—Revision of Budget and Program Plans (FMS Article IV)

1128.400 Purpose of FMS Article IV.
1128.405 Content of FMS Article IV.
1128.410 Approved budget.
1128.415 Prior approvals for non-construction activities.
1128.420 Prior approvals for construction activities.
1128.425 Additional prior approval for awards that support both non-construction and construction activities.
1128.430 Procedures for prior approvals.

Subpart E—Non-Federal Audits (FMS Article V)

1128.500 Purpose of FMS Article V.
1128.505 Content of FMS Article V.

Subpart F—Cost sharing or Matching (FMS Article VI)

1128.600 Purpose of FMS Article VI.
1128.605 Content of FMS Article VI.
1128.610 General requirement for cost sharing or matching.
1128.615 General criteria for determining allowability as cost sharing or matching.
1128.620 Allowability of unrecovered indirect costs as cost sharing or matching.
1128.625 Allowability of program income as cost sharing or matching.
1128.630 Valuation of services or property contributed or donated by recipients or subrecipients.
1128.635 Valuation of third-party in-kind contributions.

Subpart G—Program income (FMS Article VII)

1128.700 Purpose of FMS Article VII.
1128.705 Content of FMS Article VII.
1128.710 What program income includes.
1128.715 Recipient obligations for license fees and royalties.
1128.720 Program income use.

1128.725 Program income after the period of performance.
Appendix A to Part 1128—Terms and conditions for FMS Article I, ''Financial management system standards''
Appendix B to Part 1128—Terms and conditions for FMS Article II, ''Payments''
Appendix C to Part 1128—Terms and conditions for FMS Article III, ''Allowable costs, period of availability of funds, and fee or profit''
Appendix D to Part 1128—Terms and conditions for FMS Article IV, ''Revision of budget and program plans''
Appendix E to Part 1128—Terms and conditions for FMS Article V, ''Non-Federal audits''
Appendix F to Part 1128—Terms and conditions for FMS Article VI, ''Cost sharing or matching''
Appendix G to Part 1128—Terms and conditions for FMS Article VII, ''Program income''

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

§ 1128.1 Purpose of this part.

(a) This part specifies standard wording of general terms and conditions concerning financial and program management, including recipients' financial management systems, payments, cost sharing or matching, program income, budget and program revisions, audits, allowable costs, and periods of availability of funds.

(b) It thereby implements OMB guidance in the following portions of 2 CFR part 200, as they apply to general terms and conditions:

(1) Sections 200.80, 200.209, and 200.302 through 200.309;

(2) Sections 200.301 and 200.328, as they relate to associations between financial data and performance accomplishments and reporting under awards; and

(3) Subparts E and F.

§ 1128.2 Applicability of this part.

The types of awards and entities to which this part and other parts in this subchapter apply are described in the subchapter overview at 2 CFR 1126.2.

§ 1128.3 Exceptions from requirements of this part.

Exceptions are permitted from the administrative requirements in this part only as described at 2 CFR 1126.3.

§ 1128.4 Organization of this part.

(a) The content of this part is organized into subparts and associated appendices.

(1) Each subpart provides direction to DoD Components on how to construct one article of general terms and conditions for grants and cooperative agreements.

(2) For each subpart, there is a corresponding appendix with standard wording for terms and conditions of the article addressed by the subpart. Terms and conditions address rights and responsibilities of the Government and recipients.

(b) A DoD Component must use the wording provided in each appendix in accordance with the direction in the corresponding subpart. That direction may permit DoD Components to vary from the standard wording in some situations.

(c) The following table shows which article of general terms and conditions may be found in each of appendices A through G to this part (with the associated direction to DoD Components in subparts A through G, respectively):

In . . .	You will find terms and conditions specifying recipients' rights and responsibilities related to . . .	That would appear in an award within FMS article . . .
Appendix A	Financial management system standards	I.
Appendix B	Payments	II.
Appendix C	Allowable costs, period of availability of funds, and fee or profit	III.
Appendix D	Revision of budget and program plans	IV.
Appendix E	Non-Federal audits	V.
Appendix F	Cost sharing or matching	VI.
Appendix G	Program income	VII.

Subpart A—Financial management system standards (FMS Article I)

§ 1128.100 Purpose of FMS Article I.

FMS Article I specifies standards for recipients' financial management systems. It thereby implements OMB guidance in:

(a) 2 CFR 200.302, 200.303, and 200.328; and

(b) 2 CFR 200.301 and 200.328, as they relate to associations between financial data and performance accomplishments and reporting under awards.

§ 1128.105 Content of FMS Article I.

(a) *Requirement.* A DoD Component's general terms and conditions must address requirements for recipients' financial management systems.

(b) *Award terms and conditions*—(1) *General.* Except as provided in paragraph (b)(2) of this section, a DoD Component's general terms and conditions must include the wording appendix A to this part provides for FMS Article I.

(2) *Exceptions.* A DoD Component's general terms and conditions may:

(i) Reserve Section A of FMS Article I if the DoD Component determines that it is not possible that any States will receive:

(A) DoD Component awards using those general terms and conditions; or

(B) Subawards from recipients of DoD Component awards using those general terms and conditions.

(ii) Reserve paragraph B.6 of FMS Article I if the DoD Component determines that it will not require recipients of awards using those general terms and conditions to relate financial data to performance accomplishments (*e.g.,* through unit costs). Because the nature of research makes the use of unit costs and other relationships between financial data and performance accomplishments generally inappropriate, DoD Components should reserve paragraph B.6 in general terms and conditions for awards supporting research.

Subpart B—Payments (FMS Article II)

§ 1128.200 Purpose of FMS Article II.

FMS Article II contains requirements related to payments under an award. It thereby implements OMB guidance in 2 CFR 200.305.

§ 1128.205 Content of FMS Article II.

(a) *Requirement.* A DoD Component's general terms and conditions must address payment method; payment timing and amounts, which relate to cash management; frequency of payment requests; and matters related to recipients' depositories, including interest earned on advance payments.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions must include the wording appendix B to this part provides for FMS Article II with appropriate additions, deletions, and substitutions as described in §§ 1128.210 through 1128.220.

§ 1128.210 Payment requirements for States.

(a) *Policy.* Payments to States are subject to requirements in Department of the Treasury regulations at 31 CFR part 205 that implement the Cash Management Improvement Act. Those regulations are in two subparts with distinct requirements that apply to different programs:

(1) Subpart A of 31 CFR part 205 contains requirements for payments to States under ''major programs,'' as defined in that part. The Department of the Treasury negotiates Treasury-State agreements for major programs. Those agreements specify the appropriate timing and amounts of payments. They further specify a State's interest liability if it receives an advance payment too many days before it disburses the funds for program purposes, as well as the Federal Government's interest liability if it reimburses the State too many days after the State disburses the funds. Most DoD awards to States are not under major programs, so subpart A applies relatively infrequently.

(2) Subpart B of 31 CFR part 205 applies to all other DoD grant and cooperative agreement awards to States—*i.e.,* awards that are not under major programs.

(b) *Default wording.* Because few DoD awards to States are under major programs, appendix B to this part includes default wording for Section A of FMS Article II that specifies the requirements of subpart B of 31 CFR part 205. A DoD Component's general terms and conditions must include this wording for Section A of FMS Article II if no award using those terms and conditions will be made to a State under a program designated as a major program in the applicable Treasury-State agreement.

(c) *Exception for awards under major programs.* If a DoD Component is establishing general terms and conditions that will be used for awards to States, only some of which are subject to requirements for major programs in subpart A of 31 CFR part 205, then the DoD Component should:

(1) Use appendix B's default wording for Section A of FMS Article II in its general terms and conditions; and

(2) In each award subject to subpart A of 31 CFR part 205, include award-specific terms and conditions that make payments to the recipient subject to the requirements in subpart A of 31 CFR part 205 and the applicable Treasury-State agreement, thereby overriding the wording of Section A of FMS Article II.

§ 1128.215 Payment requirements for institutions of higher education, nonprofit organizations, local governments, and Indian tribes.

(a) *Policy.* OMB guidance in 2 CFR 200.305 addresses the use of three payment methods for awards—advance payments, reimbursement, and working capital advances. Two of the methods pertain to a DoD Component's general terms and conditions, as described in paragraphs (a)(1) and (2) of this section.

(1) *Advance payments.* With the possible exception of construction awards, as provided in paragraph (a)(2) of this section, a DoD Component's general terms and conditions must authorize each recipient to request payments in advance as long as the recipient maintains or demonstrates the willingness to maintain both:

(i) Written procedures that minimize the time elapsing between its receipt of funds from the Federal Government and its disbursement of the funds for program or project purposes; and

(ii) Financial management systems that meet the standards for fund control and accountability specified in the wording of FMS Article I (see subpart A and appendix A to this part).

(2) *Reimbursement.* A DoD Component's general terms and conditions may specify the reimbursement method if the awards using those terms and conditions will support construction projects financed in whole or in part by the Federal Government.

(b) *Default award terms and conditions.* Appendix B provides default wording for Section B of FMS Article II that a DoD Component:

(1) Must use in general terms and conditions for non-construction awards to authorize recipients to request advance payments; and

(2) May use in general terms and conditions for construction awards if it elects to authorize recipients of those awards to request advance payments.

(c) *Alternative award terms and conditions.* A DoD Component may develop an alternative to appendix B's default wording for Section B of FMS Article II to use in general terms and conditions for construction awards, if it elects to specify reimbursement as the payment method for those awards. The alternative:

(1) Would replace Appendix B's default wording for paragraph B.1 with wording to specify the reimbursement method of payment;

(2) Must include appendix B's default wording for paragraphs B.2.b and c, B.4, and B.5, which may be renumbered as appropriate, because those paragraphs apply to reimbursements as well as advance payments;

(3) Should omit appendix B's default wording for paragraphs B.2.a, B.3, and B.6 because those paragraphs apply specifically to advance payments; and

(4) Must inform recipients that the DoD payment office generally makes payment within 30 calendar days after receipt of the request for reimbursement by the award administration office, unless the request is reasonably believed to be improper.

§ 1128.220 Electronic funds transfer and other payment procedural instructions or information.

(a) *Policy.* A DoD Component's general terms and conditions must specify that payments will be made by electronic funds transfer (EFT) unless a recipient is excepted in accordance with Department of the Treasury regulations at 31 CFR part 208 from the Governmentwide requirement to use EFT.

(b) *Award terms and conditions*—(1) *Electronic funds transfer.* Appendix B provides default wording for Section C of FMS Article II that a DoD Component must use to specify payment by EFT, when awards are not excepted from the Governmentwide requirement.

(2) *Other payment procedures or instructions.* A DoD Component may insert one or more paragraphs in its general terms and conditions in lieu of the reserved paragraph C.2 in appendix B, to provide procedural instructions or information regarding payments that is common to awards using those terms and conditions. For example, it may insert wording to give detailed instructions on where and how recipients are to submit payment requests. All forms, formats, and data elements for payment requests must be OMB-approved information collections.

Subpart C—Allowable costs, period of availability of funds, and fee or profit (FMS Article III)

§ 1128.300 Purpose of FMS Article III.

FMS Article III of the general terms and conditions specifies what costs are allowable as charges to awards and when they are allowable. It also specifies restrictions on payment of fee or profit. It thereby implements OMB guidance in §§ 200.209 and 200.309 and subpart E of 2 CFR part 200. It also partially implements 2 CFR 200.201(b)(1)and 200.323(c), as those sections apply to the cost principles to be used in relation to subawards and contracts, respectively.

§ 1128.305 Content of FMS Article III.

(a) *Requirement.* A DoD Component's general terms and conditions must address allowability of costs and permissibility of fee or profit.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions must include the wording appendix C to this part provides for FMS Article III with appropriate additions, deletions, and substitutions as described in §§ 1128.310 through 1128.325.

§ 1128.310 Cost principles.

(a) *Policy.* The set of Governmentwide cost principles applicable to a particular entity type governs the allowability of costs that may be:

(1) Charged to each cost-type:

(i) DoD grant or cooperative agreement to a recipient of that entity type;

(ii) Subaward to a subrecipient of that entity type at any tier below a DoD grant or cooperative agreement; and

(iii) Procurement transaction with a contractor of that entity type awarded by a recipient of a DoD grant or cooperative agreement or a subrecipient that received a subaward at any tier below that grant or cooperative agreement.

(2) Considered in establishing the amount of any:

(i) Fixed-amount subaward, at any tier under an award, to a subrecipient of that entity type; or

(ii) Fixed-price procurement transaction with a contractor of that entity type that is awarded by either a recipient of a DoD award or a subrecipient that received a subaward at any tier below that grant or cooperative agreement.

(b) *Default wording.* Because almost all DoD grants and cooperative agreements are cost-type awards, appendix C includes default wording for Section A of FMS Article III that specifies use of the applicable Governmentwide cost principles in the determination of the allowability of costs.

(c) *Alternative award terms and conditions.* A DoD Component may reserve any paragraph of appendix C's default wording for Section A of FMS Article III in its general terms and conditions if the Component is certain that no entities of the type to which the paragraph applies could be recipients of awards using those general terms and conditions or recipients of subawards or procurement transactions at any tier under those awards.

§ 1128.315 Clarification concerning allowability of publication costs.

(a) *Requirement.* A DoD Component's general terms and conditions must clarify that a recipient must charge publication costs consistently as either direct or indirect costs in order for those costs to be allowable charges to DoD grants and cooperative agreements.

(b) *Award terms and conditions*—(1) *General.* To clarify the allowability of publication costs, a DoD Component's general terms and conditions must include the wording appendix C to this part provides for Section B of FMS Article III.

(2) *Exception.* A DoD Component may instead reserve Section B of FMS Article III in its general terms and conditions if the DoD Component determines that there will be no publication costs under any of the awards using those general terms and conditions.

§ 1128.320 Period of availability of funds.

(a) *Requirement.* A DoD Component's general terms and conditions must specify the period during which Federal funds are available for obligation by recipients for project or program purposes.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions must include the wording appendix C to this part provides for Section C of FMS Article III to specify the period of availability of funds.

§ 1128.325 Fee or profit.

(a) *Requirement.* A DoD Component's general terms and conditions must specify that recipients may neither receive fee or profit nor pay fee or profit to subrecipients.

(b) *Award terms and conditions.* A DoD Component must use the wording appendix C to this part provides for Section D of FMS Article III to specify the limitation on payment of fee or profit.

Subpart D–Revision of Budget and Program Plans (FMS Article IV)

§ 1128.400 Purpose of FMS Article IV.

FMS Article IV of the general terms and conditions specifies requirements related to changes in recipients' budget and program plans. It thereby implements OMB guidance in § 200.308 of 2 CFR part 200 and partially implements § 200.209 and subpart E of that part.

§ 1128.405 Content of FMS Article IV.

(a) *Requirement.* A DoD Component's general terms and conditions must specify the changes in budget and program plans for which a recipient is required to request DoD Component prior approval and the procedures for submitting those requests.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions must include as FMS Article IV the default wording appendix D to this part provides, with any revisions to the wording that are authorized by §§ 1128.410 through 1128.430.

§ 1128.410 Approved budget.

(a) *OMB guidance.* As described in 2 CFR 200.308(a), the approved budget for a grant or cooperative agreement may include both the Federal and non-Federal shares of funding under the award or only the Federal share.

(b) *DoD implementation.* For DoD grants and cooperative agreements, the approved budget includes the Federal share and any cost sharing or matching that the recipient is required to provide under the award.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions therefore must include the default wording appendix D to this part provides for Section A of FMS Article IV.

§ 1128.415 Prior approvals for non-construction activities.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.308(c) through (e) addresses prior approval requirements for revisions of a recipient's budget and program plans under a non-construction award, which includes for the purposes of this section non-construction activities under an award that supports both construction and non-construction.

(b) *DoD implementation of the guidance.* The following paragraphs (c) through (g) of this section provide details of the DoD implementation of the guidance in 2 CFR 200.308(c) through (e) and paragraph (h) specifies the corresponding award terms and conditions. A DoD Component's general terms and conditions for non-construction awards may only require additional prior approvals for budget and program revisions (*i.e.,* prior approvals other than those authorized by this subpart) in accordance with the exceptions provisions of 2 CFR 1126.3.

(c) *Scope or objective, cost sharing or matching, and additional Federal funds.* A DoD Component's general terms and conditions for non-construction awards must require that a recipient obtain DoD Component prior approval:

(1) For a change in scope or objective of the project or program, as described in 2 CFR 200.308(c)(1)(i).

(2) For any change in the cost sharing or matching included in the approved budget for which FMS Article VI requires prior approval, as described in

OMB guidance at 2 CFR 200.308(c)(1)(vii).

(3) If the need arises for additional Federal funds to complete the project or program, as described in 2 CFR 200.308(c)(1)(viii).

(d) *Personnel changes, disengagements, or reductions in time.* A DoD Component must include the following prior approval requirements in general terms and conditions of research awards and also may include them in general terms and conditions of other non-construction awards:

(1) A change in a key person, as described in 2 CFR 200.308(c)(1)(ii).

(2) A principal investigator's or project director's disengagement from, or reduction in time devoted to, the project, as described in 2 CFR 200.308(c)(1)(iii).

(e) *Costs requiring prior approval under the cost principles.* With respect to waivers of prior approvals required by the cost principles, as described in 2 CFR 200.308(c)(1)(iv):

(1) Any waiver of a cost principles requirement for prior approval by a recipient entity's cognizant agency for indirect costs is appropriately addressed in award-specific terms and conditions, rather than general terms and conditions, because the general terms and conditions must be appropriate for use in awards to multiple recipient entities.

(2) A DoD Component may waive requirements in the cost principles for recipients to request prior approval before charging certain costs as direct costs to awards. However, the DoD Component should carefully consider each prior approval requirement individually and decide:

(i) Which, if any, to waive; and

(ii) Whether to make the waiver of the prior approval requirement contingent on specified conditions (*e.g.,* a DoD Component might waive the prior approval required for direct charging of special purpose equipment purchases under an award, but elect to waive it only for equipment that is to be used primarily in carrying out the project or program supported by the award).

(f) *Transfers of funds and subawards.* A DoD Component's general terms and conditions for non-construction awards may include prior approval requirements for:

(1) Transfers of funds for participant support costs, as described in 2 CFR 200.308(c)(1)(v).

(2) Subawarding of work under an award, as described in 2 CFR 200.308(c)(1)(vi).

(3) Transfers of funds among direct cost categories, as described in 2 CFR 200.308(e), but the wording in the general terms and conditions must make clear that the prior approval requirement applies only to awards using those terms and conditions if the Federal share of the total value is in excess of the simplified acquisition threshold. Note that, as a matter of DoD policy, requiring prior approvals for transfers among direct cost categories generally is not appropriate for grants and cooperative agreements that support research.

(g) *Pre-award costs, carry forward of unobligated balances, and no-cost extensions.* (1) A DoD Component's general terms and conditions may authorize recipients to incur project costs up to 90 calendar days prior to the beginning date of the period of performance, at their own risk, as described in 2 CFR 200.308(d)(1). OMB guidance in 2 CFR 200.308(d)(4) makes that authorization the default policy for research awards and a DoD Component should override the default and require recipients to obtain the DoD Component's prior approval for pre-award costs only in exceptional circumstances.

(2) If a DoD Component's general terms and conditions are used for awards that have multiple periods of performance, the DoD Component should authorize recipients to carry forward unobligated balances to subsequent periods of performance, as described in 2 CFR 200.308(d)(3), unless there are compelling reasons not to do so.

(3) A DoD Component's general terms and conditions may authorize recipients to initiate one-time extensions in the periods of performance of their awards by up to 12 months, subject to the conditions described in 2 CFR 200.308(d)(2), but only if the DoD Component judges that authorizing no-cost extensions for awards using the general terms and conditions will not cause the DoD Component to fail to comply with DoD funding policies (*e.g.,* the incremental program budgeting and execution policy for research funding) contained in Volume 2A of the DoD Financial Management Regulation, DoD 7000.14–R.

(h) *Award terms and conditions.* Appendix D to this part provides default wording for inclusion in a DoD Component's general terms and conditions in accordance with paragraphs (c) through (g) of this section. Specifically:

(1) In accordance with paragraph (c) of this section, a DoD Component's general terms and conditions for non-construction awards must include the default wording that appendix D provides for paragraphs B.1.a and B.1.i of FMS Article IV and, if there will be cost sharing or matching required under any awards using the general terms and conditions, paragraph B.1.g.

(2) In accordance with paragraph (d) of this section, a DoD Component's general terms and conditions for research awards must include the default wording that appendix D provides for paragraphs B.1.b and B.1.c of FMS Article IV. A DoD Component also may include paragraphs B.1.b and B.1.c in general terms and conditions for other non-construction awards.

(3) In accordance with paragraph (e) of this section, a DoD Component's general terms and conditions for non-construction awards must include the default wording that Appendix D provides for paragraph B.1.d of FMS Article IV unless the DoD Component decides to waive any requirements in the applicable cost principles for recipients to obtain prior approval before including certain types of costs as direct charges to awards. If a DoD Component elects to waive any of those prior approval requirements, it must add wording to paragraph B.1.d to identify the specific types of costs for which recipients need not obtain DoD Component prior approval (thereby leaving in place the other prior approval requirements in the cost principles).

(4) In accordance with paragraphs (f) and (g) of this section, a DoD Component's general terms and conditions for non-construction awards may include the default wording that appendix D provides for paragraphs B.1.e, B.1.f, and B.1.h and Section C of FMS Article IV. A DoD Component may modify the default wording as appropriate to the awards using its general terms and conditions (*e.g.,* to limit the authorization for pre-award costs to a period less than 90 calendar days prior to the beginning date of the period of performance).

(5) If no awards using a DoD Component's general terms and conditions will support non-construction activities, the DoD Component may reserve section B.1 of the default wording that appendix D provides for FMS Article IV.

§ 1128.420 Prior approvals for construction activities.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.308(g)(1) through (4) addresses prior approval requirements for revisions of a recipient's budget and program plans under a construction award or construction activities under an award that supports both construction and non-construction activities.

(b) *DoD implementation of the guidance.* DoD implements the guidance in 2 CFR 200.308(g)(1) through (4) through terms and conditions of awards for construction. A DoD Component's general terms and conditions for construction awards may only require additional prior approvals for budget and program revisions (*i.e.,* prior approvals other than those authorized by this subpart) only in accordance with the exceptions provisions of 2 CFR 1126.3.

(c) *Award terms and conditions.* In a DoD Component's general terms and conditions for construction awards or awards supporting construction activities, the DoD Component:

(1) Must include the default wording that appendix D to this part provides for paragraph B.2 of FMS Article IV.

(2) May reserve or remove the default wording appendix D to this part provides for paragraph B.1 and Section C of FMS Article IV unless some awards using the general terms and conditions will also support non-construction activities (if the DoD Component elects to remove Section C, it should redesignate Section D in the article as Section C).

§ 1128.425 Additional prior approval for awards that support both non-construction and construction activities.

(a) *OMB guidance.* Guidance on an additional prior approval requirement for awards that support both construction and non-construction activities is contained in 2 CFR 200.308(g)(5).

(b) *DoD implementation of the guidance.* DoD implements the guidance in 2 CFR 200.308(g)(5) through terms and conditions for awards that support both non-construction and construction activities.

(c) *Award terms and conditions.* If a DoD Component establishes general terms and conditions for awards that support both non-construction and construction activities, the DoD Component may add the prior approval requirement for funding or budget transfers between construction and non-construction activities that is described in OMB guidance in 2 CFR 200.308(g)(5). The default wording that appendix D to this part provides for Section B of FMS Article IV includes a reserved paragraph B.3 in which the DoD Component may add appropriate wording to include that prior approval requirement.

§ 1128.430 Procedures for prior approvals.

(a) *OMB guidance.* Guidance on procedures related to recipient requests for prior approval is contained in 2 CFR 200.308(h) and (i).

(b) *DoD implementation of the guidance.* DoD implements the guidance in 2 CFR 200.308(h) and (i) for prior approval requests through award terms and conditions.

(c) *Award terms and conditions.* A DoD Component must:

(1) Include the default wording appendix D to this part provides for paragraph D.1 of FMS Article IV of its general terms and conditions.

(2) Insert appropriate wording in lieu of the reserved paragraph D.2 that appendix D to this part includes in FMS Article IV to specify:

(i) The format the recipient must use when it requests approval for budget revisions. As described in 2 CFR 200.308(h), the award term may allow the recipient to submit a letter of request but otherwise must specify that the recipient use the same format it used for budget information in its application or proposal.

(ii) Any other procedural instructions related to requests for prior approvals for budget or program revisions (*e.g.,* to whom requests must be submitted) that are common to the awards using the general terms and conditions. For procedural instructions that will vary from one award to another, it is appropriate to include wording that points to the award-specific terms and conditions as the source of the information.

Subpart E—Non-Federal Audits (FMS Article V)

§ 1128.500 Purpose of FMS Article V.

FMS Article V of the general terms and conditions specifies requirements related to audits required under the Single Audit Act, as amended (31 U.S.C., chapter 75). The article thereby implements OMB guidance in subpart F of 2 CFR part 200.

§ 1128.505 Content of FMS Article V.

(a) *Requirement.* A DoD Component's general terms and conditions must address audit requirements.

(b) *Award terms and conditions*—(1) *General.* A DoD Component's general terms and conditions must include the default wording appendix E to this part provides for FMS Article V.

(2) *Exception.* A DoD Component may reserve Section B of the default wording in appendix E if there will be no subawards to for-profit entities under any award using those terms and conditions.

Subpart F—Cost sharing or Matching (FMS Article VI)

§ 1128.600 Purpose of FMS Article VI.

FMS Article VI sets forth requirements concerning recipients' cost sharing or matching under awards. It thereby implements OMB guidance in:

(a) 2 CFR 200.306 and 200.308(c)(1)(vii); and

(b) 2 CFR 200.434, in conjunction with FMS Article III in appendix C to this part.

§ 1128.605 Content of FMS Article VI.

(a) *Requirement.* General terms and conditions for DoD grants and cooperative agreements under which there may be required cost sharing or matching must specify the criteria for determining allowability, methods for valuation, and requirements for documentation of cost sharing or matching.

(b) *Award terms and conditions*—(1) *General.* A DoD Component's general terms and conditions must include as FMS Article VI the default wording appendix F to this part provides, with any revisions to the wording that are authorized by §§ 1128.610 through 1128.635.

(2) *Exception.* A DoD Component may reserve FMS Article VI of its general terms and conditions if it determines that there will be no cost sharing or matching required under any of the awards using those terms and conditions.

§ 1128.610 General requirement for cost sharing or matching.

(a) *Requirement.* (1) FMS Article VI of the general terms and conditions must tell a recipient that:

(i) It may find the amount or percentage of cost sharing or matching required under its award in the award cover pages.

(ii) The cost sharing or matching amount or percentage identified in the award includes all required (but not voluntary uncommitted) contributions to the project or program by the recipient and its subrecipients, including any that involve third-party contributions or donations to the recipient and subrecipients.

(iii) It must obtain the DoD Component's prior approval for any change in the required amount or percentage of cost share or match.

(2) At a DoD Component's option, FMS Article VI also may require a recipient to obtain the DoD Component's prior approval if it wishes to substitute alternative cost sharing or matching contributions in lieu of specific contributions included in the

approved budget (*e.g.,* to use a third-party in-kind contribution not included in the approved budget).

(b) *Award terms and conditions.* To implement paragraph (a) of this section, a DoD Component's general terms and conditions must include the default wording Section I of Appendix F to this part provides as Section A of FMS Article VI. A DoD Component may insert wording in lieu of the reserved paragraph A.2.b if it elects to require recipients to obtain prior approval before substituting alternative cost sharing or matching contributions, as described in paragraph (a)(2) of this section.

§ 1128.615 General criteria for determining allowability as cost sharing or matching.

(a) *OMB guidance.* The OMB guidance in 2 CFR 200.306(b) lists the basic criteria for the allowability of cost sharing or matching under Federal awards.

(b) *Award terms and conditions*—(1) *General.* A DoD Component's general terms and conditions must include the default wording Section II of appendix F to this part provides as Section B of FMS Article VI to specify the allowability of cash or third-party in-kind contributions as cost sharing or matching.

(2) *Exception.* A DoD Component may reserve paragraph B.4 of Section B of FMS Article VI in its general terms and conditions, or replace it with appropriate alternative wording, if the DoD Component has statutory authority to accept costs reimbursed by other Federal awards as cost sharing or matching under the awards using its general terms and conditions.

§ 1128.620 Allowability of unrecovered indirect costs as cost sharing or matching.

(a) *OMB guidance.* The OMB guidance in 2 CFR 200.306(c) provides that unrecovered indirect costs may only be included as part of cost sharing and matching with the prior approval of the Federal awarding agency.

(b) *DoD implementation.* DoD Components must allow any recipient that either has an approved negotiated indirect cost rate or is using the de minimis rate described in 2 CFR 200.414(f) to count unrecovered indirect costs toward any required cost sharing or matching under awards. The basis for this policy is that recipients' indirect costs that are allowable and allocable to DoD projects and programs are legitimate costs of carrying out those projects and programs.

(c) *Award terms and conditions.* To implement the policy in paragraph (b) of this section, a DoD Component's general terms and conditions must include the default wording Section III of appendix F to this part provides as Section C of FMS Article VI unless a statute requires otherwise.

§ 1128.625 Allowability of program income as cost sharing or matching.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.307(e)(3) specifies that, with the prior approval of the Federal awarding agency, recipients may use program income to meet cost sharing or matching requirements of their awards.

(b) *Award terms and conditions*—(1) *General.* A DoD Component's general terms and conditions must include the default wording Section IV of appendix F to this part provides as Section D of FMS Article VI if, in FMS Article VII of those terms and conditions, the DoD Component specifies that recipients dispose of program income using either:

(i) The cost sharing or matching alternative described in paragraph (b)(1)(iii) of § 1128.720; or

(ii) A combination alternative, as described in paragraph (b)(1)(iv) of § 1128.720, that includes use of at least some program income as cost sharing or matching.

(2) *Exception.* A DoD Component may reserve Section D of FMS Article VI if FMS Article VII of those terms and conditions does not provide that recipients will use any program income as cost sharing or matching.

§ 1128.630 Valuation of services or property contributed or donated by recipients or subrecipients.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.306(d) specifies:

(1) That values for recipients' and subrecipients' contributions of services or property toward cost sharing or matching must be established in accordance with the cost principles in subpart E of 2 CFR part 200; and

(2) Types of projects or programs under which recipients' or subrecipients' donations of buildings or land are allowable as cost sharing or matching, with the prior approval of the Federal awarding agency, and how the donations are to be valued in those cases.

(b) *DoD implementation.* DoD implements the guidance in 2 CFR 200.306(d) through award terms and conditions, with the following clarifications:

(1) *Cost principles to be used for valuation.* (i) Values for recipients' and subrecipients' contributions of services or property toward cost sharing or matching must be established in accordance with the cost principles applicable to the entity making the contribution. Note that the applicable cost principles are in subpart E of 2 CFR part 200 only if the entity making the contribution is an institution of higher education, nonprofit organization, State, local government, or Indian tribe.

(ii) Consistent with the cost principles, what generally should be charged to awards for real property and equipment is depreciation rather than allowing a recipient's or subrecipient's donation of the property (*i.e.,* counting the full value of the property toward cost sharing or matching). Note, however, that depreciation included in a recipient's or subrecipient's indirect costs is not appropriate for counting as cost sharing or matching under an individual award.

(2) *Donations of property to projects or programs under awards.* (i) In addition to donations of buildings or land described in 2 CFR 200.306(d), recipients and subrecipients may, with the prior approval of the DoD Component, donate other capital assets described in the cost principles in 2 CFR 200.439(b)(1) through (3). The basis for clarifying that recipients may donate other capital assets to projects or programs under awards is that, with the DoD Component's approval:

(A) Capital expenditures to acquire those types of capital assets are allowable as direct charges to awards; and

(B) The costs therefore satisfy the allowability criterion in 2 CFR 200.306(b)(4) and can qualify as cost sharing or matching if they meet the other criteria listed in 2 CFR 200.306(b).

(ii) However, when there are alternative ways for recipients to meet requirements for cost sharing or matching, DoD Components should not approve donations of capital assets to projects or programs under awards. Inclusion of the full value of a donated asset as project costs in the approved budget of an award is analogous to inclusion of the acquisition cost for an asset that is purchased under the award. Through the donation, the Government acquires an interest in the donated asset that must be resolved at time of disposition of the asset, which is best avoided if possible.

(iii) Whenever a DoD Component permits a recipient to donate a capital asset to a project or program under an award, it should inform the cognizant Federal agency that negotiates the indirect cost rate for that recipient. Doing so enables the cognizant agency to take the donation into account when it establishes the recipient's indirect cost rate, given that the recipient may not include depreciation for the donated

asset as indirect costs that enter into the computation of the rate.

(c) *Award terms and conditions*—(1) *General.* A DoD Component's general terms and conditions must use the default wording Section V of appendix F to this part provides as Section E of FMS Article VI.

(2) *Exception.* A DoD Component's general terms and conditions may reserve paragraph E.2 of the default wording appendix F to this part provides if the DoD Component does not allow recipients to donate buildings, land, or other capital assets to projects or programs under awards using those terms and conditions.

§ 1128.635 Valuation of third-party in-kind contributions.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.306(e) through (j) and 2 CFR 200.434(b) through (g) specifies how to value and document various types of third-party in-kind contributions or donations for cost sharing or matching purposes.

(b) *Award terms and conditions*—(1) *General.* To implement the OMB guidance described in paragraph (a) of this section as it applies to valuation and documentation of third-party in-kind contributions and donations, a DoD Component's general terms and conditions must use the default wording Section VI of appendix F to this part provides as Section F of FMS Article VI.

(2) *Exception.* A DoD Component's general terms and conditions may reserve any paragraph of the default wording Section VI of appendix F to this part provides for Section F of FMS Article VI if the DoD Component determines that there will be no third-party in-kind contributions of the type the paragraph addresses under awards using those terms and conditions.

Subpart G—Program Income (FMS Article VII)

§ 1128.700 Purpose of FMS Article VII.

FMS Article VII of the general terms and conditions specifies requirements for program income that recipients earn. The article thereby implements OMB guidance in 2 CFR 200.80 and 200.307.

§ 1128.705 Content of FMS Article VII.

(a) *Requirement.* General terms and conditions for DoD grants and cooperative agreements must address the kinds of income included as program income, the way or ways in which a recipient may use it, the duration of the recipient's accountability for it, and related matters.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions must include as FMS Article VII the default wording appendix G to this part provides, with any revisions to the wording of Sections A, D, and E of the article that are authorized by §§ 1128.710 through 1128.725.

§ 1128.710 What program income includes.

(a) *OMB guidance.* Under the definition of ''program income'' at 2 CFR 200.80, and related OMB guidance at 2 CFR 200.307, an agency's regulations or award terms and conditions may include as program income:

(1) Rebates, credits, discounts, and interest earned on any of them; and

(2) Taxes, special assessments, levies, fines and other similar revenue raised by a governmental recipient.

(b) *DoD implementation.* Unless a statute or program regulation adopted in the Code of Federal Regulations after opportunity for public comment specifies otherwise, each DoD Component must exclude the types of income listed in paragraphs (a)(1) and (2) of this section from program income for which recipients are accountable to the Federal Government.

(c) *Award terms and conditions*—(1) *General.* Except as provided in paragraph (c)(2) of this section, a DoD Component must use the default wording provided in Section I of appendix G to this part as Section A of FMS Article VII in its general terms and conditions. Doing so excludes the types of income listed in paragraphs (a)(1) and (2) of this section from program income for which recipients are accountable to the Federal Government.

(2) *Exceptions.* If a DoD Component has a statutory or regulatory basis for including one or both of the types of income described in paragraphs (a)(1) and (2) of this section, it may do so by appropriately revising the default wording appendix G provides for Section A of FMS Article VII. For example, to include as program income:

(i) Rebates, credits, discounts, and interest earned on them, a DoD Component would reserve paragraph A.3.c and insert the wording of that paragraph as a new paragraph at the end of section A.2, thereby adding them to the list of items included as program income subject to FMS Article VII.

(ii) Taxes, special assessments, levies, fines and other similar revenue raised by a governmental recipient, a DoD Component would reserve paragraph A.3.d and insert that wording as a new paragraph at the end of section A.2, thereby adding them to the list of items included as program income subject to FMS Article VII.

§ 1128.715 Recipient obligations for license fees and royalties.

(a) *Policy.* Unless a statute or program regulation adopted in the Code of Federal Regulations after opportunity for public comment provides otherwise, a DoD Component's general terms and conditions may not specify that recipients have obligations to the Federal Government with respect to program income from license fees and royalties for patents or patent applications, copyrights, trademarks, or inventions produced under DoD awards.

(b) *Award terms and conditions*—(1) *General.* Except as provided in paragraph (b)(2) of this section, a DoD Component's general terms and conditions must implement the policy in paragraph (a) of this section by including the default wording provided in Section III of appendix G to this part as Section D of FMS Article VII.

(2) *Exception.* If a DoD Component has a statutory or regulatory basis for establishing recipient obligations for the license fees and royalties described in paragraph (a) of this section, it may reserve Section D of FMS Article VII in its general terms and conditions.

§ 1128.720 Program income use.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.307(e) identifies alternative ways that a Federal agency might specify that recipients use program income they earn.

(b) *DoD implementation.* A DoD Component's general terms and conditions must specify how recipients are to use program income under awards using those terms and conditions.

(1) The terms and conditions may specify one of the following ways for recipients to use program income:

(i) *Addition.* A recipient under this alternative adds program income to the total amount of the approved budget, which consists of the Federal share of funding and any required matching or cost sharing.

(ii) *Deduction.* A recipient using this alternative subtracts program income from total allowable costs to determine net allowable costs for purposes of determining the Federal share of funding and any required cost sharing or matching.

(iii) *Cost sharing or matching.* A recipient under this alternative counts program income toward its required cost sharing or matching.

(iv) *Combination.* The fourth alternative is a combination of the three described in paragraphs (b)(1)(i) through (iii) of this section. For example, an agency might specify one alternative to be used for program income up to a

dollar limit and a second alternative for any program income beyond that amount.

(2) For research awards, absent compelling reasons to do otherwise for a specific set of general terms and conditions, a DoD Component must specify the addition alternative described in paragraph (b)(1)(i) of this section.

(3) For general terms and conditions of other awards, a Component may specify any of the alternatives described in paragraph (a) of this section. However, note that the cost sharing or matching alternative is best used as part of a combination alternative, as described in paragraph (b)(1)(iv) of this section, unless the DoD Component knows at the time awards are made how much program income recipients will earn in relation to the amounts of their required cost sharing or matching.

(c) *Award terms and conditions.* (1) *Default—addition alternative.* In accordance with the DoD implementation in paragraph (b) of this section, a DoD Component must use the default wording provided in Section IV of appendix G to this part as Section E of FMS Article VII in:

(i) Research awards; and

(ii) Other awards for which it elects to specify the addition alternative for use of program income.

(2) *Deduction alternative.* A DoD Component electing to specify the deduction alternative for use of program income should modify the default wording appendix G to this part provides for Section E by:

(i) Substituting the following wording for the default wording of paragraph E.1: ''1. You must use any program income that you earn during the period of performance under this award as a deduction from the total approved budget of this award. The program income must be used for the purposes and in accordance with the terms and conditions of the award.''

(ii) Including an additional paragraph E.4 such as the following to inform recipients how the award will change if program income is deducted: ''If you report program income on the SF–425, we will recalculate the Federal share of the budget and the non-Federal share if there is one. We also will modify the award to reflect the recalculated share or shares and the amount of program income you must spend on the project, which is the difference between the originally approved and recalculated budget amounts.''

(3) *Cost-sharing or matching alternative.* A DoD Component electing to specify the cost-sharing or matching alternative for use of program income should replace the default wording appendix G to this part provides for Section E with the following wording: ''You must use any program income that you earn during the period of performance under this award to meet any cost-sharing or matching requirement under this award. The program income must be used for the purposes and in accordance with the terms and conditions of the award.''

(4) *A combination of alternatives.* A DoD Component electing to specify some combination of addition, deduction, and cost-sharing or matching alternatives must use wording in Section E of FMS Article VII that specifies requirements for each alternative in the combination that is consistent with the requirements specified for that alternative in paragraphs (c)(1), (2), or (3) of this section.

§ 1128.725 Program income after the period of performance.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.307(f) provides that an agency may specify in agency regulations, award terms and conditions, or agreements negotiated with recipients during the closeout process that a recipient is accountable to the Federal Government for program income earned after the end of the period of performance.

(b) *DoD implementation.* A DoD Component should rarely, if ever, establish a requirement for a recipient to be accountable to the Federal Government for program income earned after the end of the period of performance.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions must include as Section F of FMS Article VII the default wording for that section that is provided in Section V of appendix G to this part. That wording specifies that recipients are not accountable to the Federal Government for program income earned after the end of the performance period. If an exception is warranted for an individual award, the exception is properly addressed at the time of award in the award-specific terms and conditions.

Appendix A to Part 1128—Terms and Conditions for FMS Article I, ''Financial Management System Standards''

DoD Components must use the following standard wording in FMS Article I in accordance with § 1128.105 of this part:

FMS Article I. Financial management system standards. (December 2014)

Section A. System standard for States. As a State, you must expend and account for funds under this award in accordance with:

1. Applicable State laws; and

2. To the extent they comply with the requirements of Section B of this Article, your procedures for expending and accounting for your own State funds.

Section B. System standards for all recipients. Your financial management system must provide for:

1. Inclusion, in your accounts, of the following information about each DoD grant or cooperative agreement that you receive:

a. That you received the award from the Department of Defense;

b. The number and title listed in the Catalog of Federal Domestic Assistance for the DoD program under which the award was made;

c. The DoD award number;

d. The year (your fiscal year) in which you received the award;

2. Accurate, current, and complete disclosure of the financial results of the award needed to comply with financial and programmatic reporting requirements that are specified in REP Articles I and II of these general terms and conditions, as supplemented by any award-specific terms and conditions of this award concerning reporting requirements. If you are asked at any time under this award to report financial information on an accrual basis, you:

a. Need not establish an accrual accounting system if you maintain your records on a different basis; and

b. May develop the accrual data based on an analysis of the data you have on hand.

3. Records that identify adequately the sources of funds for all activities funded by DoD awards, including any required cost sharing or matching, and the application of those funds. This includes funding authorizations; your obligations and expenditures of the funds; unobligated balances; property and other assets under the award; program income; and interest.

4. Effective control over, and accountability for, all funds, property, and other assets under this award. You must adequately safeguard all assets and assure they are used solely for authorized purposes (see Section C of this article for additional requirements concerning internal controls).

5. Comparison of expenditures under this award for project or program purposes with amounts in the approved budget for those purposes.

6. The ability to relate financial data to performance accomplishments under this award if you are required to do so by the programmatic reporting requirements in REP Article I of these general terms and conditions, as supplemented by any award-specific terms and conditions of this award concerning reporting requirements.

7. Written procedures:

a. To implement requirements specified in FMS Article II, ''Payments;''

b. For determining the allowability of costs, which for this award are determined in accordance with FMS Article III, ''Allowable costs, period of availability of funds, and fee or profit,'' of these general terms and conditions, as supplemented by any award-specific terms and conditions of this award that relate to allowability of costs.

Section C. Internal controls. Your system of internal controls must conform to OMB

guidance in 2 CFR 200.303. With respect to paragraph (e) of 2 CFR 200.303, your internal control system must include measures to safeguard any information that Federal statute, Executive order, or regulation requires to be protected (*e.g.,* personally identifiable or export controlled information), whether generated under the award or provided to you and identified as being subject to protection.

Appendix B to Part 1128—Terms and Conditions for FMS Article II, ''Payments''

DoD Components must use the following default wording in FMS Article II in accordance with §§ 1128.205 through 1128.220 of this part, which permit substitution or addition of wording, or both, when appropriate:

FMS Article II. Payments. (December 2014)

Section A. Awards to States. If the award-specific terms and conditions of this award do not identify it as an award subject to subpart A of 31 CFR part 205 (Department of the Treasury regulations implementing the Cash Management Improvement Act), then this award is subject to subpart B of that part. Consistent with subpart B of 31 CFR part 205:

1. Payment method, timing, and amounts. You must:

a. Minimize the time between your receipt of a payment under this award and your disbursement of those funds for program purposes.

b. Limit the amount of each advance payment request to the minimum amount you need to meet your actual, immediate cash requirements for carrying out the program or project.

c. Submit each advance payment request approximately 10 days before you anticipate disbursing the requested amount for program purposes, so that your receipt of the funds will be as close in time as is administratively feasible to your actual cash outlay for direct program or project costs and the proportionate share of any allowable indirect costs.

2. Interest. Unlike awards subject to subpart A of 31 CFR part 205, neither you nor we will incur any interest liability due to a difference in timing between your receipt of payments under this award and your disbursement of those funds for program purposes.

Section B. Awards to institutions of higher education, nonprofit organizations, local governments, and Indian tribes.

1. Payment method. Unless the award-specific terms and conditions of this award provide otherwise, you are authorized to request advance payments under this award. That authorization is contingent on your continuing to maintain, or demonstrating the willingness to maintain, written procedures that minimize the time elapsing between your receipt of each payment and your disbursement of the funds for program purposes. Note that you are not required to request advance payments and may instead, at your option, request reimbursements of funds after you disburse them for program purposes.

2. Amounts requested. You must:

a. Limit the amount of any advance payment request to the minimum amount needed to meet your actual, immediate cash requirements for carrying out the purpose of the approved program or project, including direct program or project costs and a proportionate share of any allowable indirect costs.

b. Exclude from any payment request amounts you are withholding from payments to contractors to assure satisfactory completion of the work. You may request those amounts when you make the payments to the contractors or to escrow accounts established to assure satisfactory completion of the work.

c. Exclude from any payment request amounts from any of the following sources that are available to you for program purposes under this award: program income, including repayments to a revolving fund; rebates; refunds; contract settlements; audit recoveries; and interest earned on any of those funds. You must disburse those funds for program purposes before requesting additional funds from us.

3. Timing of requests. For any advance payment you request, you should submit the request approximately 10 days before you anticipate disbursing the requested amount for program purposes. With time for agency processing of the request, that should result in payment as close as is administratively feasible to your actual disbursements for program or project purposes.

4. Frequency of requests. You may request payments as often as you wish unless you have been granted a waiver from requirements to receive payments by electronic funds transfer (EFT). If you have been granted a waiver from EFT requirements, the award-specific terms and conditions of this award specify the frequency with which you may submit payment requests.

5. Withholding of payments. We will withhold payments for allowable costs under the award at any time during the period of performance only if one or more of the following applies:

a. We suspend either payments or the award, or disallow otherwise allowable costs, as a remedy under OAR Article III due to your material failure to comply with Federal statutes, regulations, or the terms and conditions of this award. If we suspend payments and not the award, we will release withheld payments upon your subsequent compliance. If we suspend the award, then amounts of payments are subject to adjustment in accordance with the terms and conditions of OAR Article III.

b. You are delinquent in a debt to the United States as defined in OMB Circular A–129, ''Policies for Federal Credit Programs and Non-Tax Receivables,'' in which case we may, after reasonable notice, inform you that we will not make any further payments for costs you incurred after a specified date until you correct the conditions or liquidate the indebtedness to the Federal Government.

c. The award-specific terms and conditions include additional requirements that provide for withholding of payments based on conditions identified during our pre-award risk evaluation, in which case you should have been notified about the nature of those conditions and the actions needed to remove the additional requirements.

6. Depository requirements.

a. There are no eligibility requirements for depositories you use for funds you receive under this award.

b. You are not required to deposit funds you receive under this award in a depository account separate from accounts in which you deposit other funds. However, FMS Article I requires that you be able to account for the receipt, obligation, and expenditure of all funds under this award.

c. You must deposit any advance payments of funds you receive under this award in insured accounts whenever possible and, unless any of the following apply, you must deposit them in interest-bearing accounts:

i. You receive a total of less than $120,000 per year under Federal grants and cooperative agreements.

ii. You would not expect the best reasonably available interest-bearing account to earn interest in excess of $500 per year on your cash balances of advance payments under Federal grants and cooperative agreements.

iii. The best reasonably available interest-bearing account would require you to maintain an average or minimum balance higher than it would be feasible for you to do within your expected Federal and non-Federal cash balances.

iv. A foreign government or banking system precludes your use of interest-bearing accounts.

d. You may retain for administrative expenses up to $500 per year of interest that you earn in the aggregate on advance payments you receive under this award and other Federal grants and cooperative agreements. You must remit annually the rest of the interest to the Department of Health and Human Services, Payment Management System, using the procedures set forth in OMB guidance in 2 CFR 200.305(b)(9).

Section C. Electronic funds transfer and other payment procedural instructions or information.

1. Electronic funds transfer. Unless the award-specific terms and conditions of this award provide otherwise, you will receive payments under this award by electronic funds transfer.

2. [Reserved].

Appendix C to Part 1128—Terms and Conditions for FMS Article III, ''Allowable Costs, Period of Availability of Funds, and Fee or Profit''

DoD Components must use the following default wording in FMS Article III in accordance with sections 1128.305 through 1128.325 of this part, which permit substitution of alternative wording, addition of supplemental wording, or both, when appropriate:

FMS Article III. Allowable costs, period of availability of funds, and fee or profit. (December 2014)

Section A. Allowable costs. This section, with the clarification provided in Section B, specifies which Federal cost principles must be used in determining the allowability of costs charged to this award, a subrecipient's

costs charged to any cost-type subaward that you make under this award, and a contractor's costs charged to any cost-type procurement transaction into which you enter under this award. These cost principles also govern the allowable costs that you or a subrecipient of a subaward at any tier below this award may consider when establishing the amount of any fixed-amount subaward or fixed-price procurement transaction at the next lower tier. The set of cost principles to be used in each case depends on the type of entity incurring the cost under the award, subaward, or contract.

1. General case. If you, your subrecipient, or your contractor is:

a. An institution of higher education, the allowability of costs must be determined in accordance with provisions of subpart E of OMB guidance in 2 CFR part 200 other than 2 CFR 200.400(g), supplemented by appendix III to that part.

b. A hospital, the allowability of costs must be determined in accordance with provisions of appendix IX to 2 CFR part 200, which currently specifies the cost principles in appendix IX to 45 CFR part 75 as the applicable cost principles.

c. A nonprofit organization other than a hospital or institution of higher education, the allowability of costs must be determined in accordance with provisions of subpart E of OMB guidance in 2 CFR part 200 other than 2 CFR 200.400(g), supplemented by appendices IV and VIII to that part. In accordance with guidance in 2 CFR 200.401(c), a nonprofit organization listed in appendix VIII to 2 CFR part 200 is subject to the cost principles for for-profit entities specified in paragraph 1.e of this section.

d. A State, local government, or Indian tribe, the allowability of costs must be determined in accordance with applicable provisions of subpart E of OMB guidance in 2 CFR part 200 other than 2 CFR 200.400(g), supplemented by appendices V through VII to that part.

e. A for-profit entity (other than a hospital) or a nonprofit organization listed in Appendix VIII to 2 CFR part 200:

i. The allowability of costs must be determined in accordance with:

A. The cost principles for commercial organizations in the Federal Acquisition Regulation (FAR) at subpart 31.2 of 48 CFR part 31, as supplemented by provisions of the Defense Federal Acquisition Regulation Supplement (DFARS) at subpart 231.2 of 48 CFR part 231; and

B. For a for-profit entity, the additional provisions on allowability of audit costs, in 32 CFR 34.16(f).

ii. The indirect cost rate to use in that determination is:

A. The for-profit entity's federally negotiated indirect cost rate if it has one.

B. Subject to negotiation between you and the for-profit entity if it does not have a federally negotiated indirect cost rate. The rate that you negotiate may provide for reimbursement only of costs that are allowable in accordance with the cost principles specified in paragraph A.1.e.i of this article.

2. Exception. You may use your own cost principles in determining the allowability of a contractor's costs charged to a cost-type procurement transaction under this award—or in pricing for a fixed-price contract based on estimated costs—as long as your cost principles comply with the Federal cost principles that paragraph A.1 of this section identifies as applicable to the contractor.

Section B. Clarifications concerning charges for professional journal publications. For an entity that Section A of this article makes subject to the cost principles in subpart E of 2 CFR part 200:

1. Costs of publishing in professional journals are allowable under 2 CFR 200.461(b) only if they are consistently applied across the organization. An organization may not charge costs of journal publications as direct costs to this award if it charges any of the same type of costs for other journal publications as indirect costs.

2. ''Costs of publication or sharing of research results'' in 2 CFR 200.461(b)(3) are the ''charges for professional journal publications'' described in 2 CFR 200.461(b) and subject to the conditions of 2 CFR 200.461(b)(1) and (2).

Section C. Period of availability of funds. You may charge to this award only:

1. Allowable costs incurred during the period of performance specified in this award, including any subsequent amendments to it;

2. Any pre-award costs that you are authorized (by either the terms and conditions of FMS Article IV or the DoD awarding official) to incur prior to the start of the period of performance, at your own risk, for purposes of the program or project under this award; and

3. Costs of publishing in professional journals incurred after the period of performance, as permitted under 2 CFR 200.461(b)(3), if:

a. We receive the request for payment for such costs no later than the date on which REP Article II requires you to submit the final financial report to us (or, if we grant your request for an extension of the due date, that later date on which the report is due); and

b. Your reported expenditures on the final financial report include the amount you disbursed for those costs.

Section D. Fee or profit.

1. You may not receive any fee or profit under this award.

2. You may not use funds available to you under this award to pay fee or profit for an entity of any type to which you make a subaward.

3. You may pay fee or profit to an entity with which you enter into a procurement transaction to purchase goods or general support services for your use in carrying out the project or program under the award.

Appendix D to Part 1128—Terms and Conditions for FMS Article IV, ''Revision of Budget and Program Plans''

I. *SECTION A OF FMS ARTICLE IV.* DoD Components must use as Section A of FMS Article IV the following default wording in accordance with § 1128.410 of this part:

FMS Article IV. Revision of budget and program plans. (December 2014)

Section A. Approved budget. The approved budget of this award:

1. Is the most recent version of the budget that you submitted and we approved (either at the time of the initial award or a more recent amendment), to summarize planned expenditures for the project or program.

2. Includes all Federal funding that we make available to you under this award to use for program or project purposes and any cost sharing or matching that you are required to provide under this award for those same purposes.

II. *SECTIONS B AND C OF FMS ARTICLE IV.* DoD Components must use the following default wording in Sections B and C of FMS Article IV in accordance with §§ 1128.415 through 1128.425 of this part, which permit reserving wording, substitution of alternative wording, and addition of supplemental wording, when appropriate:

Section B. Revisions requiring prior approval.

1. Non-construction activities. You must request prior approval from us for any of the following program or budget revisions in non-construction activities:

a. A change in the scope or objective of the project or program under this award, even if there is no associated budget revision that requires our prior approval.

b. A change in a key person identified in the award cover pages.

c. The approved principal investigator's or project director's disengagement from the project for more than three months, or a 25 percent reduction in his or her time devoted to the project.

d. The inclusion of direct costs that require prior approval in accordance with the applicable cost principles, as identified in FMS Article III.

e. The transfer to other categories of expense of funds included in the approved budget for participant support costs, as defined at 2 CFR 200.75.

f. A subaward to another entity under which it will perform a portion of the substantive project or program under the award, if it was not included in the approved budget. This does not apply to your contracts for acquisition of supplies, equipment, or general support services you need to carry out the program.

g. Any change in the cost sharing or matching you provide under the award, as included in the approved budget, for which FMS Article VI requires prior approval.

h. A transfer of funds among direct cost categories or programs, functions, and activities, if the federal share of the total value for your award exceeds the simplified acquisition threshold and the cumulative amount of the transfers exceeds or is expected to exceed 10 percent of the approved budget.

i. The need arises for additional Federal funds to complete the project or program.

2. Construction activities. You must request prior approval from us for any of the following program or budget revisions in construction activities:

a. A change in the scope or objective of the project or program under this award, even if there is no associated budget revision that requires our prior approval.

b. The need arises for additional Federal funds to complete the project.

c. The inclusion of direct costs that require prior approval in accordance with the applicable cost principles, as identified in FMS Article III.

3. Funding transfers between construction and non-construction activities. [Reserved.]

Section C. Pre-award costs, carry forward of unobligated balances, and one-time no-cost extensions. You are authorized, without requesting prior approval from us, to:

1. Charge to this award after you receive it pre-award costs that you incurred, at your own risk, up to 90 calendar days before the start date of the period of performance, as long as they are costs that would be allowable charges to the project or program under the terms and conditions of FMS Article III if they were incurred during the period of performance.

2. Carry forward an unobligated balance to a subsequent period of performance under this award.

3. Initiate a one-time extension of the period of performance by up to 12 months, as long as:

a. You notify us in writing with the supporting reasons and revised end date of the period of performance at least 10 calendar days before the current end date.

b. The extension does not require any additional Federal funding.

c. The extension does not involve any change in the scope or objectives of the project or program.

III. *SECTION D OF FMS ARTICLE IV.* In accordance with § 1128.430 of this part, DoD Components must use the following default wording for paragraph D.1 of Section D of FMS Article IV and insert appropriate wording in lieu of the reserved paragraph D.2:

Section D. Procedures.

1. We will review each request you submit for prior approval for a budget or program change and, within 30 calendar days of our receipt of your request, we will respond to you in writing to either:

a. Notify you whether your request is approved; or

b. Inform you that we still are considering the request, in which case we will let you know when you may expect our decision.

2. [Reserved.]

Appendix E to Part 1128—Terms and Conditions for FMS Article V, ''Non-Federal Audits''

DoD Components must use the following default wording in FMS Article V in accordance with section 1128.505 of this part:

FMS Article V. Non-Federal audits. (December 2014)

Section A. Requirements for entities subject to the Single Audit Act. You and each subrecipient under this award that is an institution of higher education, nonprofit organization, State, local government, or Indian tribe must comply with the audit requirements specified in subpart F of 2 CFR part 200, which is the OMB implementation of the Single Audit Act, as amended (31 U.S.C. chapter 75).

Section B. Requirements for for-profit entities. Any for-profit entity that receives a subaward from you under this award is subject to the audit requirements specified in 32 CFR 34.16. Your subaward terms and conditions will require the subrecipient to provide the reports to you if it is willing to do so, so that you can resolve audit findings that pertain specifically to your subaward (*e.g.,* disallowance of costs). If the for-profit entity is unwilling to agree to provide the auditor's report to you, contact the grants officer for this award to discuss an alternative approach for carrying out audit oversight of the subaward. If the grants officer does not provide an alternative approach within 30 days of receiving your request, you may determine an approach to ensure the for-profit subrecipient's compliance with the subaward terms and conditions, as described in OMB guidance at 2 CFR 200.501(h).

Appendix F to Part 1128—Terms and Conditions for FMS Article VI, ''Cost Sharing or Matching''

DoD Components that do not reserve FMS Article VI as permitted under § 1128.605 of this part must use the wording provided in this appendix in accordance with §§ 1128.610 through 1128.635.

I. *SECTION A OF FMS ARTICLE VI.* DoD Components must use as Section A of FMS Article VI the following wording in accordance with § 1128.610 of this part:

FMS Article VI. Cost sharing or matching. (December 2014)

Section A. Required cost sharing or matching.

1. If any cost sharing or matching is required under this award, the total amount or percentage required is shown in the award cover pages and included in the approved budget. That cost sharing or matching includes all:

a. Cash and third party in-kind contributions.

b. Contributions to the project or program made either by or through (if made by a third party) you and any subrecipients.

2. You must obtain our prior approval if you wish to:

a. Change the amount or percentage of cost sharing or matching required under this award.

b. [Reserved].

II. *SECTION B OF FMS ARTICLE VI.* DoD Components must use the following default wording in Section B of FMS Article VI in accordance with § 1128.615 of this part, which permits reserving paragraph B.4 under certain conditions:

Section B. Allowability as cost sharing or matching. Each cash or third party in-kind contribution toward any cost sharing or matching required under this award, whether put forward by you or a subrecipient under a subaward that you make, is allowable as cost sharing or matching if:

1. You (or the subrecipient, if it is a subrecipient contribution) maintain records from which one may verify that the contribution was made to the project or program and, if it is a third-party in-kind contribution, its value.

2. The contribution is not counted as cost sharing or matching for any other Federal award.

3. The contribution is:

a. Allowable under the cost principles applicable to you (or the subrecipient, if it is a subrecipient contribution) under FMS Article III of these terms and conditions; and

b. Allocable to the project or program and reasonable.

4. The Government does not pay for the contribution through another Federal award, unless that award is under a program that has a Federal statute authorizing application of that program's Federal funds to other Federal programs' cost sharing or matching requirements.

5. The value of the contribution is not reimbursed by the Federal share of this award as either a direct or indirect cost.

6. The contribution conforms to the other terms and conditions of this award, including the award-specific terms and conditions.

III. *SECTION C OF FMS ARTICLE VI.* DoD Components must use the following default wording in Section C of FMS Article VI in accordance with § 1128.620 of this part:

Section C. Allowability of unrecovered indirect costs as cost sharing or matching. You may use your own or a subrecipient's unrecovered indirect costs as cost sharing or matching under this award. Unrecovered indirect costs means the difference between the amount of indirect costs charged to the award and the amount that you and any subrecipients could have charged in accordance with your respective approved indirect cost rates, whether those rates are negotiated or de minimis (as described in 2 CFR 200.414(f)).

IV. *SECTION D OF FMS ARTICLE VI.* DoD Components must use the following default wording in Section D of FMS Article VI or reserve the section, in accordance with § 1128.625 of this part:

Section D. Allowability of program income as cost sharing or matching. If FMS Article VII of these general terms and conditions or the award-specific terms and conditions of this award specify that you are to use some or all of the program income you earn to meet cost-sharing or matching requirements under the award, then program income is allowable as cost sharing or matching to the extent specified in those award terms and conditions.

V. *SECTION E OF FMS ARTICLE VI.* DoD Components must use the following default wording in Section E of FMS Article VI in accordance with § 1128.630 of this part:

Section E. Valuation of services or property that you or subrecipients contribute or donate. You must establish values for services or property contributed or donated toward cost sharing or matching by you or subrecipients in accordance with the provisions of this section. These contributions or donations are distinct from third-party contributions or donations to you or subrecipients, which are addressed in Section F of this article.

1. Usual valuation of services or property that you or subrecipients contribute or donate. Values established for contributions of services or property by you or a subrecipient must be the amounts allowable

in accordance with the cost principles applicable to the entity making the contribution (*i.e.,* you or the subrecipient), as identified in FMS Article III. For property, that generally is depreciation.

2. Needed approvals for, and valuation of, property that you or subrecipients donate.

a. Types of property that may be donated.

i. Buildings or land. If the purposes of this award include construction, facilities acquisition, or long-term use of real property, you may donate buildings or land to the project if you obtain our prior approval. Donation of property to the project, as described in PROP Article I, means counting the value of the property toward cost sharing or matching, rather than charging depreciation.

ii. Other capital assets. If you obtain our prior approval, you may donate to the project other capital assets identified in 2 CFR 200.439(b)(1) through (3).

b. Usual valuation of donated property. Unless you obtain our approval as described in paragraph E.2.c of this article, the value for the donated property must be the lesser of:

i. The value of the remaining life of the property recorded in your accounting records at the time of donation, or

ii. The current fair market value.

c. Approval needed for alternative valuation of property. If you obtain our approval in the approved budget, you may count as cost sharing or matching the current fair market value of the donated property even if it exceeds the value of the remaining life of the property recorded in your accounting records at the time of donation.

d. Federal interest in donated property. Donating buildings, land, or other property to the project, rather than charging depreciation, results in a Federal interest in the property in accordance with PROP Article I of these terms and conditions.

VI. *SECTION F OF FMS ARTICLE VI.* DoD Components must use the following default wording in Section F of FMS Article VI or reserve the section, in accordance with § 1128.635 of this part:

Section F. Valuation of third-party in-kind contributions.

1. General. If a third party furnishes goods or services to you or subrecipients that are to be counted toward cost sharing or matching under this award, the entity to which the third party furnishes the goods or services (*i.e.,* you or a subrecipient) must document the fair market value of those in-kind contributions and, to the extent feasible, support those values using the same methods the entity uses internally.

2. Valuation of third-party services. You must establish values for third-party volunteer services and services of third parties' employees furnished to you or subrecipients as follows:

a. Volunteer services. Volunteer services furnished by third party professional and technical personnel, consultants, and other skilled and unskilled labor must be valued in accordance with 2 CFR 200.306(e).

b. Services of third parties' employees. When a third-party organization furnishes the services of its employees to you or a subrecipient, values for the contributions must be established in accordance with 2 CFR 200.306(f).

c. Additional requirement for donations to nonprofit organizations. For volunteer services or services of third parties' employees furnished to a nonprofit organization:

i. OMB guidance in 2 CFR 200.434(e) also applies and may require the nonprofit organization to allocate a proportionate share of its applicable indirect costs to the donated services.

ii. The indirect costs that the nonprofit organization allocates to the donated services in that case must be considered project costs and may be either reimbursed under the award or counted toward required cost sharing or matching, but not both.

2. Valuation of third-party property. You must establish values for third-party property furnished to you or subrecipients as follows:

a. Supplies donated by third parties. When a third party organization donates supplies (*e.g.,* office, laboratory, workshop, or classroom supplies), the value that may be counted toward cost sharing or matching may not exceed the fair market value of the supplies at the time of donation.

b. Equipment, buildings, or land donated by third parties.

i. The value of third-party donations of equipment, buildings, or land that may be counted toward cost sharing or matching when the third party transferred title to you or a subrecipient depends on the purpose of the award in accordance with the following:

A. If one of the purposes of the award is to assist you or the subrecipient in the acquisition of equipment, buildings, or land, you may count the aggregate fair market value of the donated property toward cost sharing or matching.

B. If the award's purposes instead include only the support of activities that require the use of equipment, buildings, or land, you may only charge depreciation unless you obtain our prior approval to count as cost sharing or matching the fair market value of equipment or other capital assets and fair rental charges for land.

ii. The values of the donated property must be determined in accordance with the usual accounting policies of the entity to which the third party transferred title to the property, with the qualifications specified in 2 CFR 200.306(i)(1) and (2) for donated land and buildings and donated equipment, respectively.

c. Use of space donated by third parties. If a third party makes space available for use by you or a subrecipient, the value that you may count toward cost sharing or matching may not exceed the fair rental value of comparable space as established by an independent appraisal, as described in 2 CFR 200.306(i)(3).

d. Equipment loaned by third parties. If a third party loans equipment for use by you or a subrecipient, the value that you may count toward cost sharing or matching may not exceed its fair rental value.

Appendix G to Part 1128—Terms and Conditions for FMS Article VII, ''Program Income''

I. *SECTION A OF FMS ARTICLE VII.* DoD Components must use as Section A of FMS Article VII either the following default wording in accordance with § 1128.705 of this part, or revised wording compliant with § 1128.710 of this part:

FMS Article VII. Program income. (December 2014)

Section A. Definition. The term ''program income'' as used in this award:

1. Is gross income that:

a. You earn that is directly generated by a supported activity or earned as a result of this award; or

b. A subrecipient earns as a result of a subaward you make under this award.

2. Includes, but is not limited to, income earned under this award from:

a. Fees for services performed;

b. The use or rental of real or personal property acquired under any Federal award and currently administered under this award;

c. The sale of commodities or items fabricated under this award; and

d. License fees and royalties on patents and copyrights;

e. Payments of principal and interest on loans made with Federal award funds.

3. Does not include for purposes of this award any:

a. Interest earned on advance payments, disposition of which is addressed in FMS Article II;

b. Proceeds from the sale of real property, equipment or supplies, which is addressed in PROP Articles III and IV;

c. Rebates, credits, discounts, and interest earned on any of them; and

d. Governmental revenues, including any taxes, special assessments, levies, fines and similar revenues you raise.

II. *SECTIONS B AND C OF FMS ARTICLE VII.* DoD Components must use the following default wording as Sections B and C of FMS Article VII in accordance with § 1128.705 of this part:

Section B. Encouragement to earn program income. You are encouraged to earn program income under this award when doing so does not interfere with the program or project the award supports.

Section C. Costs of generating program income. You may deduct costs incidental to the generation of program income from the amount that you use in accordance with Section E of this Article, as long as those costs are not charged to this award (which includes their being counted toward any cost sharing or matching you are required to provide).

III. *SECTION D OF FMS ARTICLE VII.* DoD Components must either use the following default wording as Section D of FMS Article VII in accordance with § 1128.705 of this part or reserve the section if doing so complies with § 1128.715 of this part:

Section D. License fees and royalties. You have no obligations to the Federal Government with respect to program income earned under this award from license fees and royalties for patents or patent applications, copyrights, trademarks, or inventions developed or produced under the award.

IV. *SECTION E OF FMS ARTICLE VII.* DoD Components must use either the following default wording as Section E of FMS Article VII or alternative wording that complies with § 1128.720 of this part:

Section E. Use of program income.

1. You must use any program income that you earn during the period of performance under this award to increase the amount of the award (the sum of the Federal share and any cost sharing or matching you are required to provide), thereby increasing the amount budgeted for the project. The program income must be used for the purposes and under the terms and conditions of the award.

2. Your use of the additional funding is subject to the terms and conditions of this award, including:

a. FMS Article II concerning your use of balances of program income before you request additional funds from us; and

b. FMS Article III concerning allowability of costs for which the funds may be used.

3. You must report on each Federal Financial Report (SF–425) that you submit in accordance with REP Article II the program income that you earn and any that you use during the reporting period covered by that SF–425.

V. *SECTION F OF FMS ARTICLE VII.* DoD Components must use the following default wording as Section F of FMS Article VII in accordance with § 1128.725 of this part:

Section F. Duration of accountability for program income. The requirements concerning disposition of program income in Section E of this Article apply only to program income you earn during the period of performance. There are no requirements under this award applicable to program income you earn after the end of the period of performance.

PART 1130—PROPERTY ADMINISTRATION: GENERAL AWARD TERMS AND CONDITIONS

Sec.
1130.1 Purpose of this part.
1130.2 Applicability of this part.
1130.3 Exceptions from requirements of this part.
1130.4 Organization of this part.

Subpart A—Title to Property (PROP Article I)

1130.100 Purpose of PROP Article I.
1130.105 Title to property acquired under awards.
1130.110 Property trust relationship.
1130.115 Title to federally owned property.
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Appendix F to Part 1130—Terms and conditions for PROP Article VI, ''Intangible property''

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

§ 1130.1 Purpose of this part.

(a) This part specifies standard wording of general terms and conditions concerning equipment, supplies, and real, intangible, and federally owned property.

(b) It thereby implements OMB guidance in 2 CFR 200.310 through 200.316, as that guidance applies to general terms and conditions.

§ 1130.2 Applicability of this part.

The types of awards and entities to which this part and other parts in this subchapter apply are described in the subchapter overview at 2 CFR 1126.2.

§ 1130.3 Exceptions from requirements of this part.

Exceptions are permitted from the administrative requirements in this part only as described at 2 CFR 1126.3.

§ 1130.4 Organization of this part.

(a) The content of this part is organized into subparts and associated appendices.

(1) Each subpart provides direction to DoD Components on how to construct one article of general terms and conditions for grants and cooperative agreements.

(2) For each subpart, there is a corresponding appendix with standard wording for terms and conditions of the article addressed by the subpart. Terms and conditions address rights and responsibilities of the Government and recipients.

(b) A DoD Component must use the wording provided in each appendix in accordance with the direction in the corresponding subpart. That direction may permit DoD Components to vary from the standard wording in some situations.

(c) The following table shows which article of general terms and conditions may be found in each of appendices A through F to this part (with the associated direction to DoD Components in subparts A through F, respectively):

In . . .	You will find terms and conditions specifying recipients' rights and responsibilities related to . . .	That would appear in an award within PROP Article . . .
Appendix A	Title to property	I.
Appendix B	Property management system	II.
Appendix C	Use and disposition of real property	III.
Appendix D	Use and disposition of equipment and supplies	IV.
Appendix E	Use and disposition of federally owned property	V.
Appendix F	Intangible property	VI.

Subpart A—Title to Property (PROP Article I)

§ 1130.100 Purpose of PROP Article I.

PROP Article I specifies in whom and under what conditions title to property vests under the award. It thereby implements OMB guidance:

(a) Pertaining to vesting of title to property, in 2 CFR 200.311(a), 200.312(a), 200.313(a), 200.314(a), and 200.315(a).

(b) Pertaining to the property trust relationship in 2 CFR 200.316.

§ 1130.105 Title to property acquired under awards.

(a) *General policy.* Title to tangible property that a recipient acquires under an award (whether by purchase, construction or fabrication, development, or otherwise), and title to intangible property that a recipient acquires other than by developing or producing it under an award, generally vests in the recipient subject to the conditions in PROP Articles II–IV and Section D of PROP Article VI, which protect the Federal interest in the property.

(b) *Exceptions to the general policy when there is statutory authority*—(1) *Exempt property in general.* If a DoD Component has statutory authority to do so, it may vest title in recipients to property acquired under awards either unconditionally or subject to fewer conditions than those in PROP Articles II–IV and VI. This subpart refers to acquired property for which a DoD Component has such statutory authority—and elects to use it—as ''exempt property.''

(2) *Research awards.* (i) Under 31 U.S.C. 6306, a DoD Component may vest title to tangible personal property (*i.e.,* equipment and supplies) in a nonprofit institution of higher education or nonprofit organization whose primary purpose is conducting scientific research—without further obligation to the Government or subject to conditions the DoD Component deems appropriate—if the property is bought with amounts provided under a grant or cooperative agreement for basic or applied research.

(ii) As a matter of policy, to enhance the university infrastructure for future performance of defense research and research-related education and training, DoD Components shall make maximum use of the authority of 31 U.S.C. 6306 to vest title to equipment in nonprofit institutions of higher education subject to only the following three conditions:

(A) The recipient uses the equipment for the authorized purposes of the project or program until the property is no longer needed for those purposes.

(B) The recipient manages the equipment as provided in PROP Article II of the general terms and conditions (see subpart B of this part). This includes maintaining property records that include the percentage of Federal participation in the costs of the project or program under which the recipient acquired the exempt property, so that the recipient may deduct the Federal share if it wishes to use the property in future contributions for cost sharing or matching purposes on Federal awards.

(C) The DoD Component reserves the right to transfer title to the equipment to another recipient entity if the Principal Investigator relocates his or her research program to that entity.

(c) *Award terms and conditions*—(1) *General.* Unless a DoD Component has a statute authorizing it to identify acquired property as exempt property, as described in paragraph (b) of this section, it must use the default wording Appendix A to this part provides for Section A of PROP Article I.

(2) *Exceptions.* (i) If a DoD Component has statutory authority such as described in paragraph (b) of this section, and elects to use that authority for awards subject to its general terms and conditions, it must insert wording in paragraph A.2 of PROP Article I to:

(A) Identify the type or types of property it is excepting from the standard requirements for title vesting, use, and disposition contained in PROP Articles II through IV and VI and reporting requirements contained in REP Article III of the general terms and conditions.

(B) If it is excepting the property from some, but not all, of the standard requirements, identify the requirements to which the exempt property will be subject.

(ii) Paragraph A.2 of PROP Article I in general terms and conditions used for research awards to institutions of higher education generally should provide for vesting of title to acquired equipment in those institutions subject only to the three conditions described in paragraph (b)(2)(ii) of this section.

§ 1130.110 Property trust relationship.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.316 describes the property trust relationship. It states that:

(1) Recipients must hold real property, equipment, and intangible property acquired or improved under grants or cooperative agreements in trust for the beneficiaries of the projects or programs under which the property was acquired or improved; and

(2) A Federal agency may require a recipient to record liens or other appropriate notices of record to indicate that personal or real property was acquired or improved under a grant or cooperative agreement, making the property's use and disposition subject to the award terms and conditions.

(b) *DoD implementation.* A DoD Component's general terms and conditions must specify that recipients hold title to real property, equipment, and intangible property acquired or improved under DoD grants and cooperative agreements in trust for the beneficiaries of the projects or programs carried out under those awards.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions:

(1) Must include the default wording appendix A to this part provides for paragraph B.1 of PROP Article I, except that a DoD Component may instead reserve Section B if there will be no acquisition or improvement of real property, equipment, or intangible property under awards using those general terms and conditions or subawards under those awards.

(2) May add wording to the reserved paragraph B.2 of the default wording of Section B of PROP Article I to require recipients to record liens or other notices of record, as described in paragraph (a) of this section.

§ 1130.115 Title to federally owned property.

(a) *Requirement.* A DoD Component's general terms and conditions must include the default wording appendix A to this part provides for Section C of PROP Article I to affirm that title to federally owned property remains with the Government.

(b) *Exception.* A DoD Component may reserve Section C if it provides no federally owned property under its awards.

§ 1130.120 Federal interest in donated property.

(a) *Requirement.* A DoD Component's general terms and conditions must inform recipients that the Government acquires an interest in any real property or equipment for which the value of the remaining life of the property in the recipient's accounting records or the fair market value of the property is counted toward required cost sharing or matching, rather than charging depreciation.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions therefore must either:

(1) Include the default wording appendix A to this part provides for

Section D of PROP Article I to specify the Federal interest in donated real property or equipment; or

(2) Reserve Section D of PROP Article I if the DoD Component does not permit recipients to count the fair market value of real property or equipment toward cost sharing or matching.

§ 1130.125 Federal interest in property improved under awards.

(a) *Requirement.* General terms and conditions for DoD grants and cooperative agreements must address the Federal interest in improvements to real property or equipment that results if a recipient directly charges the costs of the improvements to an award.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions therefore must either:

(1) Include the default wording appendix A to this part provides for Section E of PROP Article I to specify the Federal interest in improved real property or equipment; or

(2) Reserve Section E of PROP Article I if there will be no improvements to real property or equipment under awards using those general terms and conditions or subawards under those awards.

Subpart B—Property Management System (PROP Article II)

§ 1130.200 Purpose of PROP Article II.

(a) PROP Article II prescribes standards for:

(1) Insurance coverage for real property and equipment acquired or improved under awards;

(2) The system that a recipient uses to manage both equipment that is acquired or improved in whole or in part under awards and federally owned property.

(b) It thereby implements OMB guidance in 2 CFR 200.310, and 200.313(d)(1) through (4), and partially implements 2 CFR 200.313(b).

§ 1130.205 Insurance coverage for real property and equipment.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.310 includes a requirement for recipients' insurance coverage for real property and equipment acquired or improved under awards and states that federally owned property need not be insured unless required by Federal award terms and conditions.

(b) *DoD implementation.* A DoD Component's general terms and conditions must require recipients to provide insurance coverage for real property and equipment acquired or improved under awards. However, unless a statute or program regulation adopted in the Code of Federal Regulations after opportunity for public comment specifies otherwise, DoD awards will not require recipients to insure federally owned property.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions therefore must either:

(1) Include the default wording appendix B to this part provides for Section A of PROP Article II; or

(2) Reserve Section A of PROP Article II if there will be no real property or equipment acquired or improved under awards using those terms and conditions or subawards under those awards.

§ 1130.210 Other management system standards for States.

(a) *Requirement.* DoD Components' general terms and conditions must address the standards for States' property management systems.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions therefore must either:

(1) Include the default wording appendix B to this part provides for Section B of PROP Article II; or

(2) Reserve Section B of PROP Article II if no State will acquire or improve equipment, in whole or in part, or be accountable for federally owned property under awards using those general terms and conditions or subawards under those awards.

§ 1130.215 Other management system standards for institutions of higher education, nonprofit organizations, local governments, and Indian tribes.

(a) *Requirement.* DoD Components' general terms and conditions must address the standards for property management systems of institutions of higher education, nonprofit organizations, local governments, and Indian tribes.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions therefore must either:

(1) Include the default wording appendix B to this part provides for Section C of PROP Article II; or

(2) Reserve Section C of PROP Article II if no institution of higher education, nonprofit organization, local government, or Indian tribe will acquire or improve equipment, in whole or in part, or be accountable for federally owned property under awards using those general terms and conditions or subawards under those awards.

Subpart C—Use and Disposition of Real Property (PROP Article III)

§ 1130.300 Purpose of PROP Article III.

PROP Article III specifies requirements for recipients' use and disposition of real property acquired or improved under an award. It thereby implements OMB guidance in 2 CFR 200.311(b) and (c).

§ 1130.305 Use of real property.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.311(b) states that, except as otherwise provided by Federal statute or the Federal awarding agency, a recipient must use real property acquired or improved under an award for the originally authorized purpose as long as needed for that purpose, during which time the recipient must not dispose of the property or encumber its title or other interests.

(b) *DoD implementation.* Unless a statute or program regulation adopted in the Code of Federal Regulations after opportunity for public comment specifies otherwise, DoD awards must permit recipients to do the following:

(1) While real property acquired or improved under an award still is needed for the authorized purpose, also use it for other projects or programs that either are supported by DoD Components or other Federal agencies or not federally supported, as long as that use does not interfere with the property's use for the authorized purpose.

(2) After the real property no longer is needed for the authorized purpose, with the written approval of the award administration office, use the property on other federally supported projects or programs that have purposes consistent with those authorized for support by the DoD Component that made the award under which the property was acquired or improved.

(c) *Award terms and conditions.* DoD Component general terms and conditions must either:

(1) Include the default wording appendix C to this part provides for Section A of PROP Article III; or

(2) If a statute or program regulation in the Code of Federal Regulations specifies different requirements for recipients' use of real property, substitute alternative wording for Section A to specify those requirements.

§ 1130.310 Disposition of real property.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.311(c):

(1) Addresses the recipient's responsibility to request disposition instructions for real property when the recipient no longer needs it for the originally authorized purpose; and

(2) Identifies three alternative disposition methods those instructions may specify.

(b) *DoD implementation.* DoD implements the guidance in 2 CFR 200.311(c) through award terms and conditions that govern disposition of

real property acquired or improved under awards.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions must include the default wording appendix C to this part provides for Section B of PROP Article III to specify requirements concerning disposition of real property acquired or improved under awards.

Subpart D—Use and Disposition of Equipment and Supplies (PROP Article IV)

§ 1130.400 Purpose of PROP Article IV.

PROP Article IV specifies requirements for recipients' use and disposition of equipment and supplies in which there is a Federal interest. It thereby implements OMB guidance in:

(a) 2 CFR 200.313(a) through (c), 200.313(d)(5), and 200.313(e) as that guidance applies to requirements for use and disposition of equipment; and

(b) 2 CFR 200.314, as that guidance applies to requirements for use and disposition of supplies acquired under an award.

§ 1130.405 Property subject to PROP Article IV.

(a) *Requirement.* DoD Components' general terms and conditions must identify the types of non-exempt property to which requirements for use and disposition of equipment and supplies apply.

(b) *Award terms and conditions.* To implement the requirement in paragraph (a) of this section, a DoD Component's general terms and conditions must use the default wording appendix D to this part provides for Section A of PROP Article IV. That wording identifies the categories of equipment and supplies in which there is a Federal interest, which are the categories to which the requirements for use and disposition apply.

§ 1130.410 Requirements for a State's use and disposition of equipment.

(a) *OMB guidance.* OMB guidance in:

(1) 2 CFR 200.313(a) sets forth basic conditions for use of equipment acquired under an award that apply when title to the equipment is vested in a recipient conditionally, because the awarding agency either does not have statutory authority to vest title in the equipment unconditionally or elects not to do so.

(2) 2 CFR 200.313(b) provides that a State must use, manage, and dispose of equipment in accordance with State laws and procedures.

(b) *DoD implementation.* DoD implements 2 CFR 200.313(a) and (b) through award terms and conditions that govern States' use and disposition of equipment.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions must use the default wording appendix D to this part provides for Section B of PROP Article IV to specify the requirements for a State's use and disposition of equipment in which there is a Federal interest.

§ 1130.415 Use of equipment by an institution of higher education, nonprofit organization, local government, or Indian tribe.

(a) *OMB guidance.* OMB guidance in:

(1) 2 CFR 200.313(a) sets forth basic conditions for use of equipment acquired under an award that apply when title to the equipment is vested in a recipient conditionally, because the awarding agency either does not have statutory authority to vest title in the equipment unconditionally or elects not to do so.

(2) 2 CFR 200.313(c) provides for use of equipment by an institution of higher education, nonprofit organization, local government, or Indian tribe.

(3) 2 CFR 200.313(d)(5) calls for use of sales procedures to ensure highest possible return when selling equipment.

(b) *DoD implementation.* For equipment in which there is a Federal interest under awards to institutions of higher education, nonprofit organizations, local governments, or Indian tribes, DoD implements through award terms and conditions the following portions of 2 CFR part 200 as they apply to use of equipment prior to the time of its disposition:

(1) 2 CFR 200.313(a) and (c); and

(2) 2 CFR 200.313(d)(5), as it applies to equipment sales prior to the time of disposition, to offset the acquisition cost of replacement equipment.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions must use the default wording appendix D to this part provides for Section C of PROP Article IV to specify the requirements for use of equipment described in paragraph (b) of this section.

§ 1130.420 Disposition of equipment by an institution of higher education, nonprofit organization, local government, or Indian tribe.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.313(e) addresses disposition of original or replacement equipment acquired under an award by an institution of higher education, nonprofit organization, local government, or Indian tribe.

(b) *DoD implementation.* DoD implements 2 CFR 200.313(e) through award terms and conditions that govern disposition of original or replacement equipment acquired under an award by an institution of higher education, nonprofit organization, local government, or Indian tribe when there is a Federal interest in the equipment.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions must use the default wording appendix D to this part provides for Section D of PROP Article IV to specify the requirements for disposition of equipment described in paragraph (b) of this section.

§ 1130.425 Use and disposition of supplies.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.314 sets forth requirements for use and disposition of supplies acquired under an award.

(b) *DoD implementation.* DoD implements 2 CFR 200.314 through award terms and conditions that govern use and disposition of supplies acquired under awards either by purchase or by donation as cost sharing or matching.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions must use the default wording appendix D to this part provides for Section E of PROP Article IV to specify the requirements for use and disposition of acquired supplies.

Subpart E—Use and Disposition of Federally Owned Property (PROP Article V)

§ 1130.500 Purpose of PROP Article V.

PROP Article V specifies requirements for recipients' use and disposition of federally owned property. It implements the portion of OMB guidance in 2 CFR 200.312(a) that applies to disposition of federally owned property.

§ 1130.505 Content of PROP Article V.

A DoD Component's general terms and conditions must either:

(a) Include the default wording appendix E to this part provides for PROP Article V to specify requirements for use and disposition of federally owned property; or

(b) Reserve PROP Article V if there is no possibility of recipients or subrecipients being accountable for federally owned property under awards using those terms and conditions.

Subpart F—Intangible Property (PROP Article VI)

§ 1130.600 Purpose of PROP Article VI.

PROP Article VI sets forth the rights and responsibilities of recipients and the Government with respect to intangible property. It thereby

implements OMB guidance in 2 CFR 200.315.

§ 1130.605 Copyrights asserted in works developed or otherwise acquired under awards.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.315(b) addresses recipients' and the Government's rights related to works that recipients may copyright.

(b) *DoD implementation.* DoD implements 2 CFR 200.315(b) through award terms and conditions that specify recipient and Government rights with respect to copyrightable works.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions must use the default wording appendix F to this part provides for Section A of PROP Article VI to affirm the recipient's right to assert copyright in works it develops or otherwise acquires under an award, as well as the Government's right to use the works for Federal purposes.

§ 1130.610 Inventions developed under awards.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.315(c) states that recipients are subject to applicable regulations concerning patents and inventions, including Department of Commerce regulations at 37 CFR part 401.

(b) *DoD implementation.* In implementing 2 CFR 200.315(c) for awards for the performance of experimental, developmental, or research work, DoD:

(1) Extends to other entities the patent rights provisions of chapter 18 of Title 35 of the U.S. Code and 37 CFR part 401 that directly apply to small business firms and nonprofit organizations. This broadened applicability is in accordance with the February 18, 1983, Presidential memorandum on Government patent policy, referred to in Executive Order 12591, ''Facilitating Access to Science and Technology.''

(2) Establishes a default requirement for recipients to provide final reports listing all subject inventions under their awards or stating there were none, a requirement that 37 CFR 401.5(f)(1) provides as an agency option.

(3) Incorporates the prohibition in 35 U.S.C. 212 on asserting Federal Government rights in inventions made by recipients of scholarships, fellowships, training grants, or other awards made primarily for educational purposes.

(c) *Award terms and conditions.* (1) *Awards for research, developmental, or experimental work.* A DoD Component's general terms and conditions for awards for the performance of experimental, developmental, or research work funded in whole or in part by the Government must include the default wording appendix F to this part provides for Section B of PROP Article VI, with one permitted exception. The exception is that a DoD Component may reserve or substitute alternative wording for paragraph B.2.b of Section B of PROP Article VI, as appropriate, if it elects to:

(i) Omit the requirement for final invention reports;

(ii) Substitute ''120 calendar days'' for ''90 calendar days'' to provide an additional 30 days for recipient's submissions of final reports after the end date of the period of performance; or

(iii) Include a requirement for recipients to submit information about each patent application they submit for a subject invention, interim listings of all subject inventions, or both, which the Department of Commerce regulations at 37 CFR 401.5(f)(2) and (3) permit agencies to require.

(2) *Awards for primarily educational purposes.* A DoD Component's general terms and conditions for awards to support scholarships or fellowships, training grants, or other awards for primarily educational purposes must replace the default wording appendix F to this part provides for Section B of PROP Article VI with an alternative award provision stating that the Federal Government will have no rights to inventions made by recipients.

(3) A*wards for other purposes.* A DoD Component developing general terms and conditions for awards other than those described in paragraphs (c)(1) and (2) of this section should:

(i) Consult its intellectual property counsel if it anticipates that recipients may develop patentable inventions under its awards, to identify any applicable statutes or regulations and determine an appropriate substitute for the default wording appendix F to this part provides for Section B of PROP Article VI; or

(ii) Reserve Section B of PROP Article VI if it does not expect development of any patentable inventions under those awards.

§ 1130.615 Data produced under awards.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.315(d) and (e) addresses rights in data under awards.

(b) *DoD implementation.* DoD implements 2 CFR 200.315(d) and (e) through award terms and conditions.

(c) *Award terms and conditions*—(1) *General.* A DoD Component's general terms and conditions must include the default wording appendix F to this part provides for Section C of PROP Article VI.

(2) *Exception.* A DoD Component may reserve paragraph C.2 of Section C of PROP Article VI in its general terms and conditions if:

(i) Those terms and conditions will not be used for research awards; and

(ii) The DoD Component determines that no research data as defined in 2 CFR 200.315 will be generated under the awards using those terms and conditions.

§ 1130.620 Intangible property acquired, but not developed or produced, under awards.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.315(a) addresses use and disposition of intangible property that is acquired under awards (in addition to vesting of title, which is implemented in § 1130.105 and appendix A to this part).

(b) *DoD implementation.* DoD implements 2 CFR 200.315(a) through award terms and conditions that govern use and disposition of intangible property that is acquired, but not developed or produced, under awards.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions must include the default wording appendix F to this part provides for Section D of PROP Article VI.

Appendix A to Part 1130—Terms and Conditions for PROP Article I, ''Title To Property''

I. *SECTION A OF PROP ARTICLE I.* DoD Components must use as Section A of PROP Article I the following default wording in accordance with § 1130.105 of this part, which permits addition of wording to paragraph A.2 if statutory authority exists:

PROP Article I. Title to Property. (December 2014)

Section A. Title to property acquired under this award.

1. *General.* Other than any property identified in paragraph A.2 of this section as exempt property:

a. Title to real property, equipment, and supplies that you acquire (whether by purchase, construction or fabrication, development, or otherwise) and charge as direct project costs under this award vests in you, the recipient. Title to intangible property that you acquire (other than by developing or producing it) under this award also vests in you.

b. That title is a conditional title, subject to the terms and conditions in PROP Articles II–IV, Section D of PROP Article VI, and REP Article III of this award.

c. There is a Federal interest in the property, other than intangible property that you develop or produce under the award. For real property, equipment, and intangible property, we retain this Federal interest until final disposition of the property under PROP Article III (for real property), PROP Article IV (for equipment), or Section D of PROP Article

VI (for intangible property that is acquired, other than by developing or producing it), a period that in some cases may extend beyond closeout of this award.

2. *Exempt property.* [Reserved].

II. *SECTION B OF PROP ARTICLE I.* DoD Components must use as Section B of PROP Article I the following default wording in accordance with § 1130.110 of this part, which permits insertion of wording in the reserved paragraph B.2 to specify requirements for liens or other notices of record:

Section B. Property trust relationship.

1. *Basic requirement.* Other than intangible property that you develop or produce under the award, you hold any real property, equipment, or intangible property that you acquire or improve under this award in trust for the beneficiaries of the project or program that you are carrying out under the award.

2. *Notices of record.* [Reserved].

III. *SECTION C OF PROP ARTICLE I.* DoD Components must use as Section C of PROP Article I the following default wording in accordance with § 1130.115 of this part:

Section C. Federally owned property. Title to any federally owned property that we provide to you under this award (or for which accountability is transferred to this award from another Federal award) remains with the Government.

IV. *SECTION D OF PROP ARTICLE I.* DoD Components must either use the following default wording as Section D of PROP Article I, or reserve Section D, in accordance with § 1130.120 of this part:

Section D. Federal interest in donated real property or equipment. If real property or equipment is acquired under this award through your donation of the property to the project or program (*i.e.,* counting the value of the remaining life of the property recorded in your accounting records or the fair market value as permitted under FMS Article VI of this award as part of your share of project costs to meet any cost sharing or matching requirements, rather than charging depreciation):

1. The Government acquires through that donation an interest in the real property or equipment, the value of which at any given time is the product of:

a. The Federal share of the project costs under this award; and

b. The current fair market value of the property at that time.

2. The real property or equipment is subject to Section B of this article and the terms and conditions of PROP Articles II–IV and REP Article III that are applicable to property acquired under the award.

3. The Federal interest in the real property or equipment must be addressed at the time of property disposition.

V. *SECTION E OF PROP ARTICLE I.* DoD Components must either use the following default wording as Section E of PROP Article I, or reserve Section E, in accordance with § 1130.125 of this part:

Section E. Federal interest in property improved under the award.

1. The Government has an interest in improvements (as distinct from ordinary repairs and maintenance) you make to an item of real property or equipment if you charge the costs of the improvements as direct costs to this award.

2. We thereby acquire an interest in the property if the Government did not previously have one. If the Government already had an interest in the property, the value of that Federal interest in the property increases by the amount of the Federal interest in the improvements.

3. The property is subject to Section B of this article and the terms and conditions of PROP Articles II–IV and REP Article III that are applicable to real property or equipment acquired under the award.

4. The Federal interest must be addressed at the time of property disposition.

Appendix B to Part 1130—Terms and Conditions for PROP Article II, ''Property Management System''

I. *SECTION A OF PROP ARTICLE II.* DoD Components must either use the following default wording as Section A of PROP Article II, or reserve Section A, in accordance with § 1130.205 of this part:

PROP Article II. Property Management System. (December 2014)

Section A. Insurance coverage for real property and equipment. You must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved under this award as you provide for real property and equipment that you own.

II. *SECTION B OF PROP ARTICLE II.* DoD Components must either use the following default wording as Section B of PROP Article II, or reserve Section B, in accordance with § 1130.210 of this part:

Section B. Other management system standards for a State.

1. *Equipment.* Your property management system for equipment acquired or improved in whole or in part under this award must be in accordance with your State laws and procedures.

2. *Federally owned property.* You may use your own property management system for any federally owned property for which you are accountable, as long as it meets the following minimum standards:

a. *Records.* Your records must include for each item of federally owned property:

i. A description of the item.

ii. The location of the item.

iii. The serial or other identification number.

iv. Which Federal agency holds title.

v. The date you received the item.

vi. Any data on the ultimate disposition of the item, such as the date of disposal.

vii. The Federal award identification number of the award under which you are accountable for the item.

b. *Inventory.* You must take a physical inventory of federally owned property at least biennially and reconcile the results with your records.

c. *Control system.* You must:

i. Maintain an internal property control system with adequate safeguards to prevent loss, damage, or theft of federally owned property.

ii. Investigate any loss, damage, or theft of federally owned property and promptly notify the award administration office.

d. *Maintenance.* You must maintain the property in good condition.

II. *SECTION C OF PROP ARTICLE II.* DoD Components must use the following default wording as Section C of PROP Article II in accordance with § 1130.215 of this part:

Section C. Other management system standards for an institution of higher education, nonprofit organization, local government, or Indian tribe. Your procedures for managing equipment (including replacement equipment) acquired or improved in whole or in part under this award and any federally owned property for which you are accountable under this award must, as a minimum, meet the requirements in this section.

1. *Records.* You must maintain records that include for each item of equipment or federally owned property:

a. A description of the item.

b. The serial or other identification number.

c. Who holds title (*e.g.,* you or the Government and, if the latter, which Federal agency).

d. The source of funding for the equipment, including the award number, or the source of the federally owned property, including the award number of the award under which you are accountable for the property.

e. The acquisition date and cost of the equipment (or improvement to the equipment) or the date you received the federally owned property.

f. The location, use, and condition of the equipment or federally owned property.

g. Information from which one can calculate the amount of the Federal interest in the acquisition or improvement of the item (this amount is zero after you compensate us for the Federal interest in the item or improvement).

h. Any data on the ultimate disposition of the item including the date of disposal and sale price.

2. *Labelling.* You must ensure that property owned by the Federal Government is labeled to identify it as federally owned property.

3. *Inventory.* You must take a physical inventory of equipment in which there is a Federal interest and reconcile the results with your records at least once every 2 years.

4. *Control system.* You must:

a. Maintain an internal property control system with adequate safeguards to prevent loss, damage, or theft of equipment and federally owned property.

b. Investigate any loss, damage, or theft and notify the award administration office if it involved equipment in which there is a Federal interest under the award or federally owned property.

5. *Maintenance.* You must maintain equipment acquired or improved in whole or in part under the award and federally owned property in good condition.

Appendix C to Part 1130—Terms and Conditions for PROP Article III, ''Use and Disposition of Real Property''

I. *SECTION A OF PROP ARTICLE III.* DoD Components must use either the following default wording or alternative wording as Section A of PROP Article III, in accordance with § 1130.305 of this part:

PROP Article III. Use and Disposition of Real Property. (December 2014)

Section A. Use of real property.

1. You must use real property acquired or improved under this award for the originally authorized purpose as long as needed for that purpose. During that time, you may not:

a. Dispose of the property except, with the approval of the award administration office, to acquire replacement property under this award, in which case you may use the proceeds from the disposition as an offset to the cost of the replacement property; or

b. Encumber the title or other interests in the property without the approval of the award administration office identified in this award.

2. During the time that the real property is used for the originally authorized purpose, you may make the property available for use on other projects or programs, but only if that use will not interfere with the property's use as needed for its originally authorized purpose.

a. First preference must be given to other projects or programs supported by DoD Components and second preference to those supported by other Federal agencies.

b. Third preference is for other projects or programs not currently supported by the Federal Government. You should charge user fees for use of the property in those cases, if it is at all practicable.

3. When the real property is no longer needed for the originally authorized purpose, with the written approval of the award administration office, you may delay final disposition of the property to use it on other federally sponsored projects or programs. A condition for the award administration office's approval is that the other projects or programs have purposes consistent with those authorized for support by the DoD Component that made the award under which the property was acquired or improved.

II. *SECTION B OF PROP ARTICLE III.* DoD Components must use the following default wording as Section B of PROP Article III in accordance with § 1130.310 of this part:

Section B. Disposition of real property. When you no longer need real property for the originally authorized purpose, you must obtain disposition instructions from the award administration office except as provided in paragraph A.3 of this article. Those instructions will provide for one of the following three alternatives, which are that you:

1. Retain title after compensating us for the Federal interest in the property, which is to be computed as specified in the definition of ''Federal interest.''

2. Sell the property and compensate us for the Federal interest in the property, as described in 2 CFR 200.311(c)(2).

3. Transfer title to us or a third party we designate, as described in 2 CFR 200.311(c)(3).

Appendix D to Part 1130—Terms and Conditions for PROP Article IV, ''Use and Disposition of Equipment and Supplies''

DoD Components must use as Sections A through F of PROP Article IV the following default wording in accordance with §§ 1130.405 through 1130.425 of this part:

PROP Article IV. Use and Disposition of Equipment and Supplies. (December 2014)

Section A. Property subject to this article. This article specifies requirements for use and disposition of equipment and supplies. If a provision of PROP Article I or an award-specific term or condition of this award identifies any equipment or supplies as exempt property, requirements of this Article apply to that exempt property only to the extent specified in that provision of PROP Article I or the award-specific term or condition. The types of non-exempt property to which this article applies are:

1. Supplies that you acquire either by purchase or by donation as cost sharing or matching under this award; and

2. Equipment for which title is vested conditionally in you. That includes equipment with a conditional title resulting from your having, either under this award or under a previous award from which you transferred accountability for the equipment to this award:

a. Directly charged as project costs, in whole or in part, the acquisition (by purchase, construction or fabrication, or development) of equipment;

b. Donated the equipment to the project or program by counting the value of the remaining life of the property recorded in your accounting records or the fair market value toward any cost sharing or matching requirements under the award, rather than charging depreciation (see PROP Article I, Section D); or

c. Directly charged as project costs improvements to the equipment that meet the criteria given in paragraph E.1 of PROP Article I.

Section B. Requirements for a State's use and disposition of equipment. You:

1. Must use the equipment for the authorized purposes of the project or program during the period of performance, or until the property is no longer needed for those purposes.

2. May not encumber the property without the prior written approval of the award administration office.

3. Must use and dispose of the equipment in accordance with your State laws and procedures.

Section C. Use of equipment by an institution of higher education, nonprofit organization, local government, or Indian tribe. You:

1. Must use the equipment for the authorized purposes of the project or program under this award until the equipment is no longer needed for those purposes, whether or not the project or program continues to be supported by this award.

2. May not encumber the equipment without the prior written approval of the award administration office.

3. During the time that the equipment is used for the project or program under this award:

a. You must make the equipment available for use on other projects or programs but only if that use will not interfere with the equipment's use as needed for the project or program supported by this award.

i. First preference must be given to other projects or programs supported or previously supported by DoD Components and second preference to those supported or previously supported by other Federal agencies.

ii. Third preference is for other projects or programs not supported by the Federal Government. You should charge user fees for use of the equipment in those cases, if it is at all practicable.

b. You may use the equipment, if you need to acquire replacement equipment, as a trade-in or sell it (using sales procedures designed to ensure the highest possible return) and use the proceeds from the sale to offset the cost of the replacement equipment.

4. When the equipment is no longer needed for the project or program under this award, you may defer final disposition of the equipment and continue to use it on other federally sponsored projects or programs. You must give first priority to other projects or programs supported by DoD Components.

5. Notwithstanding the encouragement in FMS Article VII to earn program income, you may not use equipment in which there currently is a Federal interest—whether you acquired it under this award or are otherwise accountable for it under this award—to provide services for a fee that is less than private companies charge for equivalent services.

Section D. Disposition of equipment by an institution of higher education, nonprofit organization, local government, or Indian tribe. You must request disposition instructions from the award administration office when either original or replacement equipment acquired under this award with a current fair market value that exceeds $5,000 is no longer needed for the original project or program or for other federally sponsored activities as described in paragraph C.4 of this article. For each item of equipment with a current fair market value of $5,000 or less, you may retain, sell, or otherwise dispose of the item with no further obligation to the Federal Government.

1. We may issue disposition instructions that:

a. Allow you to retain or sell any item of equipment after compensating us for the Federal interest in the property, which is to be computed as specified in the definition of ''Federal interest.''; or

b. Require you to transfer title to the equipment to a Federal agency or a third party, in which case you are entitled to compensation from us for the non-Federal interest in the equipment, plus any reasonable shipping or interim storage costs incurred.

2. If we fail to provide disposition instructions for any item of equipment

within 120 calendar days of receiving your request, you may retain or sell the equipment but you must compensate us for the amount of the Federal interest in the equipment.

3. If you sell the equipment:

i. You must use sales procedures designed to ensure the highest possible return; and

ii. You may deduct and retain for selling and handling expenses either $500 or ten percent of the proceeds, whichever is less.

Section E. Use and disposition of supplies acquired under this award.

1. *Use.* As long as we retain a Federal interest in supplies acquired under this award either by purchase or by donation as cost sharing or matching, you may not use the supplies to provide services to other organizations for a fee that is less than private companies charge for equivalent services, notwithstanding the encouragement in FMS Article VII to earn program income.

2. *Disposition.* If you have a residual inventory of unused supplies with aggregate value exceeding $5,000 at the end of the period of performance under this award, and the supplies are not needed for any other Federal award, you must retain the supplies or sell them but must in either case compensate us for the amount of the Federal interest in the supplies. You may deduct and retain for selling and handling expenses either $500 or ten percent of the proceeds, whichever is less.

Appendix E to Part 1130—Terms and Conditions for PROP Article V, ''Use and Disposition of Federally Owned Property''

DoD Components must use as PROP Article V the following default wording in accordance with § 1130.505 of this part:

PROP Article V. Use and Disposition of Federally Owned Property. (December 2014)

Section A. Use. During the time that federally owned property for which you are accountable under this award is used for the project or program supported by the award, you:

1. Also may make the property available for use on other federally supported projects or programs, but only if that use will not interfere with the property's use for the project or program supported by this award. You must give first priority to other projects or programs supported by DoD Components.

2. May use the property for purposes other than federally supported projects or programs only with the prior approval of the awarding office or, if you request approval after the award is made, the award administration office.

Section B. Disposition. You must request disposition instructions from the award administration office for any federally owned property under this award, including any property for which a subrecipient is accountable under a subaward you make under this award, either:

1. At any time during the period of performance if the property is no longer needed for the project or program supported by this award; or

2. At the end of the period of performance.

Appendix F to Part 1130—Terms and Conditions for PROP Article VI, ''Intangible Property''

DoD Components must use as PROP Article VI the following default wording in accordance with §§ 1130.605 through 1130.620 of this part, which permit revisions or reservations of the default wording of Section B and paragraph C.2:

PROP Article VI. Intangible Property. (December 2014)

Section A. Assertion of copyright.

1. You may assert copyright in any work that is eligible for copyright protection if you acquire ownership of it under this award, either by developing it or otherwise.

2. With respect to any work in which you assert copyright, as described in paragraph A.1 of this section, the Department of Defense reserves a royalty-free, nonexclusive and irrevocable license to:

a. Reproduce, publish, or otherwise use the work for Federal Government purposes; and

b. Authorize others to reproduce, publish, or otherwise use the work for Federal Government purposes.

Section B. Inventions developed under the award.

1. *Applicability of Governmentwide clause for research awards.* You must comply with the Governmentwide patent rights award clause published at 37 CFR 401.14, with the modifications described in paragraph B.2 of this section. DoD adopts that Governmentwide clause for the following entities, thereby broadening the applicability beyond types of entities included in the definition of ''contractor'' in 37 CFR part 401:

a. Any governmental or nonprofit entity (the types of entities subject to these general terms and conditions) receiving a DoD award for the performance of experimental, research, or developmental work;

b. Any governmental, nonprofit, or for-profit entity receiving a subaward to perform experimental, research, or developmental work under an award described in paragraph B.1.a of this section.

2. *Modifications to the wording of the Governmentwide clause.* DoD adopts the Governmentwide clause at 37 CFR 401.14, as described in paragraph B.1 of this section, with the following modifications:

a. *Terminology.* Throughout the Governmentwide award clause:

i. Insert the terms ''recipient'' and ''subrecipient (or contractor to the recipient or to a subrecipient)'' to replace the terms ''contractor'' and ''subcontractor,'' respectively.

ii. Insert the terms ''award'' and ''subaward (or contract under either the award or a subaward)'' to replace the terms ''contract'' and ''subcontract,'' respectively.

b. *Final report.* Add a new subparagraph (f)(5) to read, ''The recipient must submit a final report listing all subject inventions made under the award or stating that there were none. The final report is due 90 calendar days after the end date of the period of performance unless you request and we grant an extension of the due date.''

c. *Broadening applicability to all entities.* Delete paragraphs (g)(2) and (3) of the Governmentwide clause, redesignate paragraph (g)(1) as paragraph (g), and delete the phrase ''to be performed by a small business firm or domestic nonprofit organization'' from paragraph (g) as redesignated.

Section C. Data produced under the award.

1. *Data in general.* The Federal Government has the right to:

a. Obtain, reproduce, publish, or otherwise use the data produced under this award; and

b. Authorize others to receive, reproduce, publish, or otherwise use the data produced under this award for Federal Government purposes.

2. *Research data requested under the Freedom of Information Act (FOIA).*

a. If we receive a request under the FOIA for ''research data'' that are related to ''published research findings'' produced under this award and that were ''used by the Federal Government in developing an agency action that has the force and effect of law,'' you must provide the data to us within a reasonable time after we request it from you, so that the data can be made available to the public through procedures established under the FOIA.

b. For purposes of the requirement in paragraph C.2.a of this section, 2 CFR 200.315(e) provides definitions of the phrases ''published research findings,'' ''used by the Federal Government in developing an agency action that has the force and effect of law,'' and ''research data.''

Section D. Use and disposition of intangible property acquired, but not developed or produced, under the award.

1. *Applicability.* This section applies to a patent, patent application, copyright, or other intangible property acquired, but not developed or produced, under this award.

2. *Use.* You:

a. Must use the intangible property for the authorized purpose under this award until the intangible property is no longer needed for that purpose, whether or not that purpose is still being supported by this award.

b. May not encumber the intangible property without the prior written approval of the award administration office.

3. *Disposition.* When the intangible property is no longer needed for the originally authorized purpose, you must contact the award administration office to arrange for disposition in accordance with the procedures specified for disposition of equipment in either section B or D of PROP Article IV, as applicable.

PART 1132—RECIPIENT PROCUREMENT PROCEDURES: GENERAL AWARD TERMS AND CONDITIONS

Sec.
1132.1 Purpose of this part.
1132.2 Applicability of this part.
1132.3 Exceptions from requirements of this part.
1132.4 Organization of this part.

Subpart A—Procurement Standards for States (PROC Article I)

1132.100 Purpose of PROC Article I.
1132.105 Content of PROC Article I.

Subpart B—Procurement Standards for Institutions of Higher Education, Nonprofit Organizations, Local Governments, and Indian Tribes (PROC Article II)

1132.200 Purpose of PROC Article II.
1132.205 Procurement procedures.
1132.210 Procurement of recovered materials.
1132.215 Review of recipient procurement documents.
1132.220 Bonding requirements.

Subpart C—Contract Provisions for Recipient Procurements (PROC Article III)

1132.300 Purpose of PROC Article III.
1132.305 Administrative requirements.
1132.310 National policy requirements.
Appendix A to Part 1132—Terms and Conditions for PROC Article I, ''Procurement standards for States''
Appendix B to Part 1132—Terms and Conditions for PROC Article II, ''Procurement standards for institutions of higher education, nonprofit organizations, local governments, and Indian tribes''
Appendix C to Part 1132—Terms and Conditions for PROC Article III, ''Contract provisions for recipient procurements''

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

§ 1132.1 Purpose of this part.

(a) This part specifies standard wording of general terms and conditions concerning recipients' purchases of property (supplies, equipment, and real property) and services with project funds under grants and cooperative agreements.

(b) It thereby implements OMB guidance in 2 CFR 200.317 through 200.326, and appendix II to 2 CFR part 200, as those portions of 2 CFR part 200 apply to general terms and conditions. It also partially implements 2 CFR 200.205(d), 200.213, and 200.517.

§ 1132.2 Applicability of this part.

The types of awards and entities to which this part and other parts in this subchapter apply are described in the subchapter overview at 2 CFR 1126.2.

§ 1132.3 Exceptions from requirements of this part.

Exceptions are permitted from the administrative requirements in this part only as described at 2 CFR 1126.3.

§ 1132.4 Organization of this part.

(a) The content of this part is organized into subparts and associated appendices.

(1) Each subpart provides direction to DoD Components on how to construct one article of general terms and conditions for grants and cooperative agreements.

(2) For each subpart, there is a corresponding appendix with standard wording for terms and conditions of the article addressed by the subpart. Terms and conditions address rights and responsibilities of the Government and recipients.

(b) A DoD Component must use the wording provided in each appendix in accordance with the direction in the corresponding subpart. That direction may permit DoD Components to vary from the standard wording in some situations.

(c) The following table shows which article of general terms and conditions may be found in each of appendices A through C to this part (with the associated direction to DoD Components in subparts A through C, respectively):

In . . .	You will find terms and conditions specifying recipients' rights and responsibilities related to . . .	That would appear in an award within PROC Article . . .
Appendix A	Procurement standards for States	I.
Appendix B	Procurement standards for institutions of higher education, nonprofit organizations, local governments, and Indian tribes.	II.
Appendix C	Contract provisions for recipient procurements	III.

Subpart A—Procurement Standards for States (PROC Article I)

§ 1132.100 Purpose of PROC Article I.

PROC Article I of the general terms and conditions specifies requirements for a State's procurement of property and services. It thereby implements OMB guidance in 2 CFR 200.317 and partially implements guidance in 2 CFR 200.205(d) and 200.213.

§ 1132.105 Content of PROC Article I.

(a) *Requirement.* A DoD Component's general terms and conditions must address requirements for States' procurement systems.

(b) *Award terms and conditions.* (1) *General.* Except as provided in paragraph (b)(2) of this section, a DoD Component's general terms and conditions must use the wording appendix A to this part provides for PROC Article I.

(2) *Exception.* A DoD Component's general terms and conditions may instead reserve PROC Article I if the DoD Component determines that it is not possible that any States will receive:

(i) DoD Component awards using those general terms and conditions; or

(ii) Subawards from recipients of DoD Component awards using those general terms and conditions.

Subpart B—Procurement Standards for Institutions of Higher Education, Nonprofit Organizations, Local Governments, and Indian Tribes (PROC Article II)

§ 1132.200 Purpose of PROC Article II.

PROC Article II of the general terms and conditions specifies procurement procedures for a recipient organization other than a State or for-profit entity. It thereby:

(a) Implements OMB guidance in 2 CFR 200.318 through 200.323, 200.324(a) and (b), and 200.325;

(b) Partially implements 2 CFR 200.205(d) and 200.213; and

(c) Implements, in conjunction with PROC Article III, 2 CFR 200.326.

§ 1132.205 Procurement procedures.

(a) *Requirement.* A DoD Component's general terms and conditions must address requirements for procurement systems of institutions of higher education, nonprofit organizations, local governments, and Indian tribes.

(b) *Award terms and conditions.* In order to implement the requirement described in paragraph (a) of this section, a DoD Component's general terms and conditions must use the wording that Section I of appendix B provides for Sections A through F of PROC Article II.

§ 1132.210 Procurement of recovered materials.

(a) *Requirement.* General terms and conditions for DoD grants and cooperative agreements must address requirements for procurement of recovered materials if State agencies or agencies of a political subdivision of a State may receive awards using those terms and conditions or be subrecipients under those awards.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions must either:

(1) Use the wording that Section II of appendix B provides for Section G of PROC Article II, to specify requirements

for a local government or other political subdivision of a State to comply with Resource Conservation and Recovery Act requirements; or

(2) Reserve Section G if the DoD Component determines that it is not possible that a political subdivision of a State will receive either:

(i) An award using those terms and conditions; or

(ii) A subaward under an award using those terms and conditions.

§ 1132.215 Review of recipient procurement documents.

(a) *Requirements.* A DoD Component's general terms and conditions must:

(1) Include a requirement for recipients to make technical specifications for proposed procurements available upon the DoD Component's request, as described in 2 CFR 200.324(a).

(2) Reserve the DoD Component's right to review a recipient's pre-procurement documents when any of the conditions described in 2 CFR 200.324(b)(1) through (5) apply and the recipient is not exempted from the requirement in accordance with 2 CFR 200.324(c).

(b) *Award terms and conditions.* To implement the requirements described in paragraph (a) of this section, a DoD Component's general terms and conditions must use the wording that Section III of appendix B to this part provides for Section H of PROC Article II.

§ 1132.220 Bonding requirements.

(a) *Requirements.* General terms and conditions for a DoD Component's grants and cooperative agreements must require each recipient to meet minimum bonding requirements if it awards any construction or facility improvement contract with a value in excess of the simplified acquisition threshold. A recipient would instead use its own bonding requirements if the DoD Component determined that the recipient's bonding policy and requirements are adequate to protect Federal interests.

(b) *Award terms and conditions*—(1) *General.* To implement the requirement in paragraph (a) of this section, a DoD Component's general terms and conditions must use the wording that section IV of appendix B to this part provides for Section I of PROC Article II. The DoD Component may include a provision in the award-specific terms and conditions to override Section I of PROC Article II in each award to a recipient for which it made the determination about the recipient's bonding policy and requirements, as described in paragraph (a) of this section.

(2) *Exceptions.* A DoD Component's general terms and conditions may omit Section I if the DoD Component determines that there will be no construction or facility improvement contracts with values in excess of the simplified acquisition threshold under awards using its general terms and conditions.

Subpart C—Contract Provisions for Recipient Procurements (PROC Article III)

§ 1132.300 Purpose of PROC Article III.

PROC Article III of the general terms and conditions specifies provisions that recipients must include in their contracts, as applicable. It thereby:

(a) Implements, in conjunction with PROC Articles I and II, OMB guidance concerning recipients' contract provisions in 2 CFR 200.317 and 200.326;

(b) Partially implements guidance in 2 CFR 200.205(d) and 200.213 concerning suspension and debarment requirements; and

(c) Partially implements guidance in 2 CFR 200.517 concerning retention and access of auditors' records.

§ 1132.305 Administrative requirements.

(a) *Requirement.* A DoD Component's general terms and conditions must require recipients to include in their contracts standard administrative requirements related to remedies, termination, allowable costs, rights in copyrights and data, records access and retention, and reporting.

(b) *Award terms and conditions.* To implement the requirement described in paragraph (a) of this section, a DoD Component's general terms and conditions must use the wording that section I of appendix C to this part provides for Section A of PROC Article III.

§ 1132.310 National policy requirements.

(a) *Requirement.* A DoD Component's general terms and conditions must require recipients to include provisions in their contracts that require the contractors to comply with applicable national policy requirements.

(b) *Award terms and conditions*—(1) *General.* To implement the requirement in paragraph (a) of this section, a DoD Component's general terms and conditions must use the wording that Section II of appendix C to this part provides for Section B of PROC Article III.

(2) *Exceptions.* (i) The Wage Rate Requirements (Construction) statute (40 U.S.C. 3141–44, 3146, and 3147) does not apply to a program carried out through grants or cooperative agreements unless another statute makes it apply to that program. A DoD Component's general terms and conditions therefore should not include the provision that appendix C to this part includes as paragraph B.2 of PROC Article III unless another statute makes the Wage Rate Requirements statute apply to the program using those general terms and conditions.

(ii) If a DoD Component determines that any of the other national policy requirements in Section B will not apply to any of the awards subject to its general terms and conditions, the DoD Component may reserve the paragraphs of Section B addressing those requirements. Should a future need arise to include the requirements in a given award, the DoD Component may include them as award-specific terms and conditions.

Appendix A to Part 1132—Terms and Conditions for PROC Article I, ''Procurement Standards for States''

DoD Components must use the following standard wording in PROC Article I in accordance with § 1132.105 of this part:

PROC Article I. Procurement Standards for States. (December 2014)

Section A. Use of State procurement system. Subject only to the conditions in Sections B through D of this article, you must use the same policies and procedures to procure supplies, equipment, real property, and services under this award that you use when you procure those items for State purposes using non-Federal funds.

Section B. Procurement of recovered materials. You must comply with the Resource Conservation and Recovery Act requirements described in OMB guidance in 2 CFR 200.322.

Section C. Debarment and suspension. You must comply with restrictions on awarding procurement transactions to excluded or disqualified parties and other requirements specified by OMB guidelines on nonprocurement debarment and suspension at 2 CFR part 180, as implemented by DoD at 2 CFR part 1125.

Section D. Contract provisions. You must include provisions in your procurement transactions under this award to require the contractors' compliance with the requirements specified in PROC Article III, as applicable.

Appendix B to Part 1132—Terms and Conditions for PROC Article II, ''Procurement Standards for Institutions of Higher Education, Nonprofit Organizations, Local Governments, and Indian Tribes''

I. *SECTIONS A THROUGH F OF PROC ARTICLE II.* DoD Components must use the following standard wording in Sections A

through F of PROC Article II in accordance with § 1132.205 of this part:

PROC Article II. Procurement Standards for Institutions of Higher Education, Nonprofit Organizations, Local Governments, and Indian Tribes. (December 2014)

Section A. General procurement standards.

1. For procurement under this award, you must comply with the following paragraphs of OMB guidance in 2 CFR 200.318:

a. 200.318(a) concerning documented procurement procedures;

b. 200.318(b) concerning oversight of contractors;

c. 200.318(c) concerning standards of conduct and conflicts of interest;

d. 200.318(e) concerning intergovernmental or inter-entity agreements;

e. 200.318(g) concerning value engineering;

f. 200.318(i) concerning procurement records;

g. 200.318(j) concerning time and material type contracts; and

h. 200.318(k) concerning settlement of issues arising out of procurements.

i. 2 CFR 200.318(d) concerning purchases of unnecessary or duplicative items.

2. You must do business only with responsible contractors who are able to perform, as described in OMB guidance in 2 CFR 200.318(h). Related to that, you must comply with restrictions on awarding procurement transactions to excluded or disqualified parties and other requirements specified by OMB guidelines on nonprocurement debarment and suspension at 2 CFR part 180, as implemented by DoD at 2 CFR part 1125.

Section B. Competition. You must award procurement transactions under this DoD award in accordance with the competition requirements described in OMB guidance in 2 CFR 200.319.

Section C. Procurement methods. You must award procurement transactions under this award using methods described in OMB guidance in 2 CFR 200.320.

Section D. Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms. You must take the affirmative steps described in OMB guidance in 2 CFR 200.321 when awarding procurement transactions under this award.

Section E. Contract cost and price. When awarding a contract under this award, you must follow the procedures related to costs and price that are described in OMB guidance in 2 CFR 200.323, using the applicable cost principles specified in FMS Article III.

Section F. Contract provisions. You must include provisions in your procurement transactions under this award to require the contractors' compliance with the requirements of PROC Article III, as applicable.

II. *SECTION G OF PROC ARTICLE II.* DoD Components must use the following standard wording in Section G of PROC Article II in accordance with § 1132.210 of this part:

Section G. Procurement of recovered materials. If you are a political subdivision of a State, you must comply with the Resource Conservation and Recovery Act requirements described in OMB guidance in 2 CFR 200.322.

III. *SECTION H OF PROC ARTICLE II.* DoD Components must use the following standard wording in Section H of PROC Article II in accordance with § 1132.215 of this part:

Section H. Review of procurement documents. Upon our request, you must make available:

1. Technical specifications on proposed procurements, as described in 2 CFR 200.324(a).

2. Pre-procurement documents for our review, as described in 2 CFR 200.324(b) unless you are exempt from that requirement under 2 CFR 200.324(c).

IV. *SECTION I OF PROC ARTICLE II.* DoD Components must use the following standard wording in Section I of PROC Article II in accordance with § 1132.220 of this part:

Section I. Bonding requirements. If you award a construction or facility improvement contract under this award with a value in excess of the simplified acquisition threshold, you must comply with at least the minimum requirements for bidders' bid guarantees and contractors' performance and payment bonds described in 2 CFR 200.325(a) through (c), unless a provision in the award-specific terms and conditions of this award excepts you from the requirement based on our determination that your bonding policy and requirements are adequate to protect Federal interests.

Appendix C to Part 1132—Terms and Conditions for PROC Article III, ''Contract Provisions for Recipient Procurements''

I. *SECTION A OF PROC ARTICLE III.* DoD Components must use the following standard wording in Section A of PROC Article III in accordance with § 1132.305 of this part:

PROC Article III. Contract Provisions for Recipient Procurements. (December 2014)

Section A. Contract provisions for administrative requirements.

1. *Remedies.* In any contract under this award for an amount in excess of the simplified acquisition threshold, you must provide for administrative, contractual, or legal remedies, including any appropriate sanctions and penalties, when the contractor violates or breaches the contract terms.

2. *Termination.* In any contract for an amount in excess of $10,000, you must specify: Conditions under which you may terminate the contract for cause or convenience; the procedures for termination; and the basis to be used for settlement.

3. *Allowable costs under cost-type contracts.* In any cost-type contract with an entity, you must include a clause to permit the entity to charge to the contract only costs that are allowable under the cost principles that FMS Article III identifies as applicable to that type of entity, as supplemented by any award-specific terms and conditions related to allowability of costs that are included in this award. Your contract clause may permit the contractor to use its own cost principles in determining the allowability of its costs charged to the contract, as long as its cost principles comply with those Federal cost principles supplemented by any award-specific terms and conditions of this award.

4. *Rights in copyright and data.* You must include in each contract under this award a provision requiring that the contractor:

a. Grant the Government a royalty-free, nonexclusive and irrevocable right to:

i. Reproduce, publish, or otherwise use for Federal purposes any work that is subject to copyright and that the contractor develops, or acquires ownership of, under this award;

ii. Authorize others to reproduce, publish, or otherwise use such work for Federal purposes; and

b. Grant the Government the right to:

i. Obtain, reproduce, publish, or otherwise use data produced under this award;

ii. Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes; and

c. Include the Government rights described in subparagraphs 4.a. and 4.b. of this section in any subcontracts.

5. *Access to records.*

a. In any negotiated, cost-type or time and materials contract for an amount in excess of the simplified acquisition threshold, you must provide for access to any of the contractor's books, documents, papers, and records that are directly pertinent to that contract, to enable and support audits, examinations, excerpts, and transcriptions. The contract provision must provide access to those records for all of the following and their duly authorized representatives:

i. You;

ii. Us as the Federal awarding agency, including our Inspector General; and

iii. The Comptroller General of the United States.

b. In any audit services contract for performance of an audit required by the Single Audit Act, as implemented by OMB in subpart F of 2 CFR part 200, you must provide for the access to audit documentation described in 2 CFR 200.517(b).

6. *Records retention.*

a. In any negotiated, cost-type or time and materials contract for an amount in excess of the simplified acquisition threshold, you must provide for retention of all records that are directly pertinent to that contract for three years after you make final payment and all pending matters are closed.

b. In any audit services contract for performance of an audit required by the Single Audit Act, as implemented by OMB in subpart F of 2 CFR part 200, you must provide for the retention of audit documentation described in 2 CFR 200.517(a).

7. *Reporting.* In any contract awarded under this award, you must include any provision for the contractor's reporting to you that may be needed in order for you to meet your requirements under this award to report to us.

II. *SECTION B OF PROC ARTICLE III.* DoD Components must use the following standard wording in Section B of PROC Article III in accordance with § 1132.310 of this part:

Section B. Contract provisions for national policy requirements.

1. *Equal employment opportunity.* You must include the clause provided in 41 CFR

60–1.4(b) in any ''federally assisted construction contract'' (as defined in 41 CFR 60–1.3) under this award unless provisions of 41 CFR part 60–1 exempt the contract from the requirement.

2. *Wage Rate Requirements (Construction),* formerly the Davis-Bacon Act. With respect to each construction contract for more than $2,000 to be awarded using funding provided under this award, you must:

a. Place in the solicitation under which the contract will be awarded a copy of the current prevailing wage determination issued by the Department of Labor;

b. Condition the decision to award the contract upon the contractor's acceptance of that prevailing wage determination;

c. Include in the contract the clauses specified at 29 CFR 5.5(a) in Department of Labor regulations at 29 CFR part 5, ''Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction,'' to require the contractor's compliance with the Wage Rate Requirements (Construction), as amended (40 U.S.C. 3141–44, 3146, and 3147); and

d. Report all suspected or reported violations to the award administration office identified in this award.

3. *Copeland Act prohibition on kickbacks.* In each contract under this award to construct, complete, or repair a building or work, you must:

a. Include a provision requiring the contractor to comply with the anti-kickback provisions of the Copeland Act (18 U.S.C. 874 and 40 U.S.C. 3145), as supplemented by Department of Labor regulations at 29 CFR part 3, ''Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States.''

b. Report all suspected or reported violations to the award administration office identified in the award notice cover sheet of this award.

4. *Contract Work Hours and Safety Standards Act for work involving mechanics or laborers.* In each contract for an amount greater than $100,000 that involves the employment of mechanics or laborers and is not a type of contract excepted under 40 U.S.C. 3701, you must include the clauses specified in Department of Labor (DoL) regulations at 29 CFR 5.5(b) to require use of wage standards that comply with the Contract Work Hours and Safety Standards Act (40 CFR, Subtitle II, Part A, Chapter 37), as implemented by the DoL at 29 CFR part 5, ''Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction.''

5. *Patents and inventions.* If you procure the services of a nonprofit organization, small business firm, or other entity for the performance of experimental, developmental or research work, you must include in the contract the clause prescribed in Section B of PROP Article VI to establish contractual requirements regarding subject inventions resulting from the contract and provide for Government rights in those inventions.

6. *Clean air and water requirements.* You must:

a. In each contract for an amount greater than $150,000 under this award, include a clause requiring the contractor to comply with applicable provisions of the Clean Air Act (42 U.S.C. 7401–7671q), Federal Water Pollution Control Act (33 U.S.C. 1251–1387), and standards, orders, or regulations issued under those acts; and

b. Report any violations of the Acts, standards, orders, or regulations to both the award administration office identified in this award and the appropriate regional office of the Environmental Protection Agency.

7. *Nonprocurement suspension and debarment.* Unless you have an alternate method for requiring the contractor's compliance, you must include a clause in each contract for an amount equal to or greater than $25,000 and in each contract for federally required audit services to require the contractor to comply with OMB guidance on nonprocurement suspension and debarment in 2 CFR part 180, as implemented by DoD regulations at 2 CFR part 1125.

8. *Byrd Amendment anti-lobbying requirements.* In each contract for an amount exceeding $100,000, you must include a clause requiring the contractor to submit to you the certification and any disclosure forms regarding lobbying that are required under 31 U.S.C. 3152, as implemented by the DoD at 32 CFR part 28.

9. *Purchase of recovered materials by States or political subdivisions of States.* In each contract under which the contractor may purchase items designated in Environmental Protection Agency (EPA) regulations in 40 CFR part 247, subpart B, you must include a clause requiring the contractor to comply with applicable requirements in those EPA regulations, which implement Section 6002 of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6962).

10. *Fly America requirements.* In each contract under which funds provided under this award might be used for international air travel for the transportation of people or property, you must include a clause requiring the contractor to:

a. Comply with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118, also known as the ''Fly America'' Act), as implemented by the General Services Administration at 41 CFR 301–10.131 through 301–10.143, which provides that U.S. Government-financed international air travel and transportation of personal effects or property must use a U.S. Flag air carrier or be performed under a cost-sharing arrangement with a U.S. carrier, if such service is available; and

b. Include the requirements of the Fly America Act in all subcontracts that might involve international air transportation.

11. *Cargo preference for United States flag vessels.* In each contract under which equipment, material, or commodities may be shipped by oceangoing vessels, you must include the clause specified in Department of Transportation regulations at 46 CFR 381.7(b) to require that at least 50 percent of equipment, materials or commodities purchased or otherwise obtained with Federal funds under this award, and transported by ocean vessel, be transported on privately owned U.S.-flag commercial vessels, if available.

PART 1134—FINANCIAL, PROGRAMMATIC, AND PROPERTY REPORTING: GENERAL AWARD TERMS AND CONDITIONS

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Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

§ 1134.1 Purpose of this part.

(a) This part specifies standard wording of general terms and conditions concerning recipients' reporting requirements.

(b) It thereby implements OMB guidance on reporting in 2 CFR part 170 and the following portions of 2 CFR part 200, as they relate to general terms and conditions:

(1) 2 CFR 200.301 and 200.327 through 200.329; and

(2) 2 CFR 200.300(b) as it relates to subaward reporting, 200.312(a) as it relates to inventories of federally owned property, and 200.343(a) as it relates to financial and performance reporting.

§ 1134.2 Applicability of this part.

The types of awards and entities to which this part and other parts in this subchapter apply are described in the subchapter overview at 2 CFR 1126.2.

§ 1134.3 Exceptions from requirements of this part.

Exceptions are permitted from the administrative requirements in this part only as described at 2 CFR 1126.3.

§ 1134.4 Organization of this part.

(a) The content of this part is organized into subparts and associated appendices.

(1) Each subpart provides direction to DoD Components on how to construct one article of general terms and conditions for grants and cooperative agreements.

(2) For each subpart, there is a corresponding appendix with standard wording for terms and conditions of the article addressed by the subpart. Terms and conditions address rights and responsibilities of the Government and recipients.

(b) A DoD Component must use the wording provided in each appendix in accordance with the direction in the corresponding subpart. That direction may permit DoD Components to vary from the standard wording in some situations.

(c) The following table shows which article of general terms and conditions may be found in each of appendices A through D to this part (with the associated direction to DoD Components in subparts A through D, respectively):

In . . .	You will find terms and conditions specifying recipients' rights and responsibilities related to . . .	That would appear in an award within REP Article . . .
Appendix A	Performance management, monitoring, and reporting	I.
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Subpart A—Performance Management, Monitoring, and Reporting (REP Article I)

§ 1134.100 Purpose of REP Article I.

REP Article I of the general terms and conditions specifies requirements related to recipient reporting on program performance. It thereby implements OMB guidance in:

(a) 2 CFR 200.328; and

(b) Portions of 2 CFR 200.301 and 200.343(a) that relate to performance reporting.

§ 1134.105 Performance reporting for construction awards.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.328(c) notes that agencies rely heavily on onsite technical inspections and certified percentage of completion data to monitor progress under construction awards and states that agencies may require additional performance reports only when considered necessary.

(b) *DoD implementation.* DoD Components may require performance reports under construction awards only when necessary and, to reduce recipient burdens, should coordinate the performance reporting with financial reporting to the maximum extent practicable.

(c) *Award terms and conditions.* (1) If a DoD Component has general terms and conditions specifically for construction awards and does not need performance reports for those awards, it:

(i) Should reserve Sections A through D of REP Article I in those terms and conditions;

(ii) Must follow the specifications in §§ 1134.135 and 1134.145 to include the default wording appendix A to this part provides for Sections E and G of REP Article I in those terms and conditions, in order to require recipients to promptly report significant developments and reserve the DoD Component's right to make site visits.

(iii) Must follow the specifications in § 1134.140 to insert wording in Section F of REP Article I in those terms and conditions, to tell recipients where and how to submit any reports of significant developments.

(2) If a DoD Component has general terms and conditions specifically for construction awards and determines that it needs performance reports for those awards:

(i) It may tailor the template and content that appendix A to this part provides for Sections A through D of REP Article I in those terms and conditions, as needed to specify the reporting requirements or, as appropriate, instead integrate those requirements into REP Article II on financial reporting. The form, format, or data elements that the DoD Component specifies for any of those performance reports must comply with requirements of the Paperwork Reduction Act of 1995, as implemented by OMB at 5 CFR part 1320, to use OMB-approved information collections if more than 9 recipients will be subject to the reporting requirement.

(ii) It must follow the specifications in §§ 1134.135 through 1134.145 concerning Sections E through G of REP Article I in those terms and conditions, as described in paragraphs (c)(1)(ii) and (iii) of this section.

§ 1134.110 When to require and when to waive performance reports for non-construction awards.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.328(f) states that an agency may waive any performance report that it does not need.

(b) *DoD implementation*—(1) *Interim reports.* DoD Components should waive requirements for interim performance reports under non-construction awards, including research awards, only when program managers have an alternative source for the information that the reports provide in support of the need for technical program oversight during the period of performance.

(2) *Final reports*—(i) *Research.* DoD Components may not waive requirements for final performance reports under research awards, even when program managers have other sources of the information they contain. A primary purpose of a final report under a research award is to document the overall project or program well enough to serve as a long-term reference from which others may understand the purpose, scope, approach, results or

outcomes, and conclusions or recommendations of the research.

(ii) *Non-construction programs other than research.* DoD Components should consider the long-term value of final performance reports for documenting program outcomes, as well as any near-term value, before waiving requirements for final reports under other non-construction awards.

(c) *Award terms and conditions.* Appendix A to this part provides a template for REP Article I of the general terms and conditions of research awards or other non-construction awards under which performance reports are required. A DoD Component must either use the default wording that appendix A provides or insert wording into the template, in accordance with §§ 1134.115 through 1134.145, to:

(1) Specify the content and form, format, or data elements recipients must use for interim and final performance reporting (see § 1134.115);

(2) Specify the reporting frequency, reporting periods, and due dates for interim performance reports (see § 1134.120);

(3) Specify the due dates and reporting periods for final performance reports (see § 1134.125);

(4) Specify that recipients may request extensions of due dates for performance reports (see § 1134.130);

(5) Require recipients to report significant developments (see § 1134.135);

(6) Specify reporting procedures (see § 1134.140); and

(7) Reserve the DoD Component's right to make site visits (see § 1134.145).

§ 1134.115 Content and forms, formats, or data elements for interim and final performance reporting under non-construction awards.

(a) *OMB guidance.* OMB guidance in:

(1) 2 CFR 200.301 and 200.328(b)(2) state that Federal awarding agencies must require recipients to use standard OMB-approved information collections for reporting performance information.

(2) 2 CFR 200.328(b)(2)(i) through (iii) list types of information that performance reports under non-construction awards will contain, as appropriate, unless other collections are approved by OMB.

(b) *DoD implementation.* (1) The content of the information collections that a DoD Component's general terms and conditions specify for non-construction awards must include the elements listed in 2 CFR 200.328(b)(2)(i) through (iii) that are appropriate to the projects or programs subject to those general terms and conditions.

(2) Forms, formats, and data elements that a DoD Component's general terms and conditions specify for performance reporting under non-construction awards must comply with requirements of the Paperwork Reduction Act of 1995 to use OMB-approved information collections, as implemented at 5 CFR part 1320.

(3) To the maximum extent practicable, a DoD Component's general terms and conditions for non-construction awards must specify that recipients use Governmentwide standard forms, formats, and data elements that also are used by other agencies for similar programs, recipients, and types of awards (*e.g.,* the Research Performance Progress Report format or any successor to it that OMB clears for interim performance progress reports under research awards to institutions of higher education and nonprofit entities).

(c) *Award terms and conditions.* To implement the provisions of paragraphs (a) and (b) of this section, a DoD Component must insert wording in lieu of the reserved Section A of REP Article I of its general terms and conditions for non-construction awards to specify the form, format, or data elements that recipients must use for interim and final performance reports. Section A of REP Article I may specify a different requirement for final performance reports than interim reports.

§ 1134.120 Frequency, reporting periods, and due dates for interim performance reporting under non-construction awards.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.328(b)(1) addresses performance reporting frequency and due dates.

(1) *Reporting frequency.* The OMB guidance states that interim performance reports should be no less frequent than annually, nor more frequent than quarterly except in unusual circumstances (*e.g.,* when more frequent reporting is necessary for effective program monitoring).

(2) *Due dates.* The OMB guidance states that due dates for interim performance reports must be:

(i) 30 calendar days after the end of the reporting period if interim reports are required quarterly or semiannually; and

(ii) 90 calendar days after the end of the reporting period if interim reports are required annually, unless the agency elects to require the annual reports before the anniversary dates of multiyear awards.

(b) *DoD implementation.* DoD implements the OMB guidance in 2 CFR 200.328(b)(1) concerning frequency and due dates of interim performance reports through award terms and conditions, with the following clarifications and added specifications concerning reporting periods:

(1) *Reporting frequency.* DoD Components rarely, if ever, should require recipients to submit interim performance reports more often than annually for basic research awards. Before requiring interim performance reports more frequently than annually for other research awards, DoD Components should carefully consider whether the benefits of more frequent reporting are sufficient to offset the potential for slowing the rate of research progress, due to diversion of researchers' time from research performance to report preparation.

(2) *Reporting periods.* For research awards, a DoD Component should not require any recipient to submit interim performance reports on a cumulative basis—*i.e.,* the second and any subsequent performance report should address only the most recent reporting period and not also address previous reporting periods covered by earlier interim performance reports.

(3) *Due dates.* If a DoD Component requires an interim report more frequently than quarterly due to unusual circumstances, as described in 2 CFR 200.328(a)(1) and paragraph (a)(1) of this section, the DoD Component must specify that the due date for the report is 30 days after the end of the reporting period. For all other interim reports, DoD Components must specify due dates in accordance with paragraph (a)(2) of this section.

(c) *Award terms and conditions.* A DoD Component must insert wording in lieu of the reserved Section B of REP Article I of its general terms and conditions for non-construction awards to specify:

(1) The frequency with which recipients must submit interim performance reports;

(2) The reporting period each interim performance report must cover; and

(3) The due date for each interim performance report, stated as the number of calendar days after the end of the reporting period.

§ 1134.125 Due dates and reporting periods for final performance reports under non-construction awards.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.328(b)(1) states that each final performance report will be due 90 calendar days after the end date of the period of performance. It also states that an agency may extend the due date if a recipient submits a justified request.

(b) *DoD implementation*—(1) *Due dates.* Consistent with 2 CFR 200.328(b)(1):

(i) *General.* A DoD Component's general terms and conditions must specify that the due date for each recipient's submission of its final performance report is 90 calendar days after the end of the period of performance.

(ii) *Exception.* A DoD Component may pre-approve a 30 day extension to the due date in its general conditions by specifying that each recipient's final performance report is due 120 calendar days after the end of the period of performance. Doing so would be especially helpful to recipients that have subawards and need time to assimilate subrecipient inputs into the final report for the project or program as a whole.

(2) *Reporting periods*—(i) *Non-construction programs other than research.* A DoD Component's general terms and conditions for non-construction programs other than research may require each recipient to submit a final report that is cumulative and covers the entire period of performance, as that may more effectively document the project or program for future reference.

(ii) *Research.* Final reports for research awards should be cumulative (*i.e.,* each final report should cover the entire period of performance under the award and not just the period since the previous interim performance report) because a primary purpose of a final report for a research award is to document the overall project or program, as described in § 1134.110(b)(2).

(c) *Award terms and conditions.* To implement the provisions of paragraphs (a) and (b) of this section, a DoD Component in its general terms and conditions for non-construction awards:

(1) Must either:

(i) Specify that the due date for final performance reports is 90 days after the end of the period of performance by including the default wording that appendix A to this part provides for paragraph C.1 of REP Article I; or

(ii) Pre-approve a 30-day extension to the due date, as described in paragraph (b)(1)(ii) of this section, by including a revision of the default wording for paragraph C.1 of REP Article I with ''120 calendar days'' inserted in lieu of ''90 calendar days.''

(2) Must insert wording in lieu of the reserved paragraph C.2 of REP Article I, to specify the reporting period for final reports (*i.e.,* whether the reports must be cumulative).

§ 1134.130 Requesting extensions of due dates for performance reports.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.328(b)(1) states that, if a recipient submits a justified request for an extension in the due date for any interim or final performance report, an agency may extend the due date.

(b) *DoD implementation.* A DoD Component's general terms and conditions for non-construction awards must specify that a recipient may request an extension of the due date for interim or final performance reports. DoD Components should grant requests that provide adequate justification. For a DoD Component that pre-approves a 30-day extension of due dates for final performance reports in its general terms and conditions, as described in § 1134.125(b)(1)(ii) and (c)(1)(ii), any award-specific extensions would be beyond the pre-approved 30-day extension.

(c) *Award terms and conditions.* To implement the provisions of paragraphs (a) and (b) of this section, a DoD Component's general terms and conditions for non-construction awards must include the default wording that appendix A to this part provides for Section D of REP Article I on extensions of performance reporting due dates.

§ 1134.135 Reporting significant developments.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.328(d) states that a recipient must promptly notify the awarding agency about significant developments.

(b) *DoD implementation.* A DoD Component's general terms and conditions must require recipients to report significant developments, as described in 2 CFR 200.328(d).

(c) *Award terms and conditions.* A DoD Component's general terms and conditions must include the default wording that appendix A to this part provides for Section E of REP Article I on reporting of significant developments.

§ 1134.140 Performance reporting procedures.

(a) *Requirement.* A DoD Component's general terms and conditions must inform recipients about performance reporting procedures.

(b) *Award terms and conditions.* (1) To implement the requirement of paragraph (a) of this section, a DoD Component in its general terms and conditions must insert wording in Section F of REP Article I (which is reserved in the template for REP Article I that appendix A to this part provides), to specify:

(i) The office or offices to which a recipient must submit its interim and final performance reports, any requests in due dates for those reports, and any reports of significant developments; and

(ii) How the recipient is to submit those reports and requests (*e.g.,* email or electronic portal).

(2) For research awards, this wording must comply with the distribution and marking requirements of DoD Manual 3200.14, Volume 1. This includes the requirement that all significant scientific or technological findings, recommendations, and results derived from DoD endeavors—which shall include the final performance report at a minimum—are recorded and provided to Defense Technical Information Center (DTIC).

§ 1134.145 Site visits.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.328(e) states that a Federal awarding agency may make site visits as warranted by program needs.

(b) *DoD implementation.* A DoD Component's general terms and conditions must state that the Government reserves the right to make site visits as warranted.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions must include the default wording that appendix A to this part provides for Section G of REP Article I concerning site visits.

Subpart B—Financial Reporting (REP Article II)

§ 1134.200 Purpose of REP Article II.

REP Article II of the general terms and conditions specifies requirements related to financial reporting. It thereby implements OMB guidance in 2 CFR 200.327 and the portions of 2 CFR 200.301 and 200.343(a) that are specific to financial reporting.

§ 1134.205 Reporting forms, formats, or data elements.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.327 states that Federal awarding agencies may require recipients to use only the standard OMB-approved Governmentwide data elements for collection of financial information, unless OMB approves other forms, formats, or data elements for financial information collection.

(b) *DoD implementation.* DoD Components must collect financial information from recipients using OMB-approved forms, formats, or data elements.

(1) Unless current approvals expire, approved financial information collections include the Governmentwide Federal Financial Report (SF–425) and Request for Advance or Reimbursement (SF–270). In

the future, they would include any additional information collections that OMB approves.

(2) For all but the recipient's final financial report after the end of the period of performance, a DoD Component may rely on financial information the recipient provides on the SF–270 or other OMB-approved payment request form, format, or data elements if that financial information is sufficient to meet the DoD Component's needs. For the final report, the DoD Component must require the recipient to use the SF–425 or other OMB-approved financial information collection.

(3) A DoD Component must obtain approval for any variations from OMB-approved forms or formats, including use of additional or substitute data elements or modification of the associated instructions for recipient entities submitting the information.

§ 1134.210 Content of REP Article II.

(a) *Requirement.* General terms and conditions for DoD grants and cooperative agreements must specify what financial information recipients are required to report and how often, when, where, and how they must report.

(b) *Award terms and conditions*—(1) *General.* Appendix B to this part provides a template into which a DoD Component must insert wording to specify the form, format, or data elements recipients must use for financial reporting; the frequency, reporting periods, and due dates for their financial reports (stated as the number of days after the end of the reporting period); and where and how they must submit the information.

(2) *Required reporting form, format, or data elements for interim and final financial reports.* In Section A of REP Article II, which is reserved in appendix B to this part, a DoD Component must insert wording to specify the OMB-approved form, format, or data elements that recipients must use for financial reporting and the Web site where they can be found. The section may provide a different requirement for final financial reports than interim reports during the period of performance if the DoD Component needs less information on interim reports than is needed on the final report.

(3) *Interim financial reports: frequency, reporting periods, and due dates.* In Section B of REP Article II, which is reserved in appendix B to this part, a DoD Component must insert wording to specify the frequency with which recipients must submit interim financial reports, as well as the reporting period each report must cover and when it is due. Note that this section may waive interim reporting requirements if the DoD Component relies on information already provided with payment requests (*e.g.,* on the SF–270).

(i) Consistent with OMB guidance in 2 CFR 200.327, the reporting frequency may be no less often than annually and no more frequently than quarterly except in unusual circumstances (*e.g.,* a need for more frequent reporting for monitoring program performance, in which case financial reporting should be in coordination with performance reporting).

(ii) The reporting frequency, reporting periods, and due dates must conform with any guidance on those aspects of financial reporting in the OMB-approved instructions accompanying the form, format, or data elements used.

(iii) When a DoD Component's general terms and conditions provide for advance payments based on predetermined schedules—which is very rarely if ever appropriate for research awards—the terms and conditions should provide for at least quarterly reporting. This will enable post-award administrators to closely monitor recipients' balances of cash on hand for compliance with Governmentwide cash management standards.

(4) *Final financial report.* Appendix B to this part provides default wording for Section C of REP Article II to implement OMB guidance in 2 CFR 200.343(a) as it applies to final financial reports. Given that 2 CFR part 200 provides 90 days for subrecipients to liquidate subaward obligations and submit their final financial reports to recipients, the default wording in appendix B gives recipients 120 days to submit final financial reports to DoD post-award administration offices. That provides a reasonable amount of time for recipients to incorporate any information they need from final subaward reports. A DoD Component may alter the default wording or supplement it if it has a basis to do so in a statute or a regulation published in the Code of Federal Regulations.

(5) *Extensions of due dates.* A DoD Component's general terms and conditions must include the default wording for Section D of REP Article II that appendix B to this part provides to authorize recipients to request extensions of due dates for interim or final financial reports.

(6) *Where and how to submit financial reports.* In Section E of REP Article II, which is reserved in appendix B to this part, a DoD Component must insert wording to specify the DoD official or office to whom a recipient must submit its interim and final financial reports and the method it must use to do so (*e.g.,* email or other electronic submission method).

Subpart C—Reporting on Property (REP Article III)

§ 1134.300 Purposes of REP Article III.

REP Article III of the general terms and conditions provides a consolidated source that sets out required reports, notifications, requests, and accountings related to federally owned property and property that is acquired or improved under awards. The article is:

(a) The original source of requirements for recipients to:

(1) Submit periodic status reports and notifications of critical changes for real property (in paragraphs A.1 and A.2 of the article), which thereby implements OMB guidance in 2 CFR 200.329;

(2) Submit an annual inventory of federally owned property (in paragraph C.1 of the article), which thereby partially implements OMB guidance in 2 CFR 200.312(a);

(3) Provide information on request about copyrighted works and data produced under awards (in paragraph D.2 of the article).

(b) A secondary source provided for the convenience of recipients and DoD post-award administrators that lists and refers to the original sources of requirements for recipients to:

(1) Request disposition instructions and account at closeout for real property (in paragraphs A.3 and A.4 of the article), the original sources of which are in PROP Article III and OAR Article VI;

(2) Provide notifications of loss, damage, or theft and requests for disposition instructions for equipment (in paragraphs B.2 and B.3 of the article), the original sources of which are in PROP Articles II and IV, respectively;

(3) Account at closeout for equipment and supplies (in paragraph B.4 of the article), the original sources of which are in OAR Article VI and PROP Article IV;

(4) Provide notifications of loss, damage, or theft and requests for disposition instructions for federally owned property (in paragraphs C.2 and C.3 of the article), the original sources of which are in PROP Articles II and V, respectively;

(5) Disclose and report on inventions developed under awards (in paragraph D.1), the original source of which is in PROP Article VI; and

(6) Request disposition instructions for intangible property acquired, but not

developed or produced, under awards (in paragraph D.3 of the article), the original source of which is in PROP Article VI.

§ 1134.305 Real property: reports, notifications, requests, and accounting.

(a) *Requirement.* A DoD Component's general terms and conditions must specify the real property reporting requirements described in § 1134.300(a)(1) and provide references to the related requirements described in § 1134.300(b)(1).

(b) *Award terms and conditions.* To implement the requirement described in paragraph (a) of this section, the wording of Section A of REP Article III of a DoD Component's general terms and conditions must comply with either paragraph (b)(1) or (b)(2) of this section.

(1) *General.* Unless a DoD Component determines that there will be no acquisition or improvement of real property under awards using its general terms and conditions, those general terms and conditions must include the default wording appendix C to this part provides for Section A of REP Article III, to which the DoD Component:

(i) Must add wording in lieu of the reserved paragraph A.1.a to specify how often a recipient must submit periodic status reports and how long it is required to do so (which should be the duration of the Federal interest in the real property). The wording of paragraph A.1.a must be consistent with OMB guidance in 2 CFR 200.329, which provides different options for reporting frequency depending on the duration of the Federal interest in the real property.

(ii) Must add wording in lieu of the reserved paragraph A.1.b to specify the due date for each periodic status report in terms of the number of calendar days after the end of the period covered by the report (*e.g.,* a report on the status of the property as of September 30 might be due 30 calendar days after that date).

(iii) May provide wording in lieu of the reserved paragraph A.1.c if there are other instructions—*e.g.,* a form, format, or information elements that a recipient must use (which must be cleared by OMB under the Paperwork Reduction Act) or a particular office to which reports must be submitted, especially if reporting will continue beyond closeout of awards under which the real property was acquired or improved.

(2) *Exception.* A DoD Component may reserve Section A of REP Article III if it determines that there will be no acquisition or improvement of real property under awards using its general terms and conditions.

§ 1134.310 Equipment and supplies: Reports, notifications, requests, and accounting.

(a) *Requirement.* REP Article III of a DoD Component's general terms and conditions must clarify that there is no requirement for routine periodic reporting about equipment and provide the references described in § 1134.300(b)(2) and (3) to requirements in other articles for notifications, requests, and accounting related to equipment and supplies.

(b) *Award terms and conditions.* To implement the requirement described in paragraph (a) of this section, a DoD Component's general terms and conditions must use the wording appendix C to this part provides for Section B of REP Article III.

§ 1134.315 Federally owned property: Inventory, notifications, and requests.

(a) *Requirement.* REP Article III of a DoD Component's general terms and conditions must specify the reporting requirement described in § 1134.300(a)(2) and provide the references described in § 1134.300(b)(4) to requirements in other articles for notifications and requests related to federally owned property.

(b) *Policy.* (1) Except as provided by statute or in regulations adopted in the Code of Federal Regulations after opportunity for public comment, a DoD Component may not specify:

(i) Due dates for the annual inventories of federally owned property; or

(ii) Forms, formats, or specific data elements for the inventories, notifications, or requests for disposition instructions. Note that any form, format, or data elements that a DoD Component specifies must be cleared by OMB under the Paperwork Reduction Act.

(2) Not specifying due dates, forms, formats, or data elements provides flexibility for recipients and DoD post-award administrators to handle these requirements in ways that reduce burdens and costs. For example, a recipient may arrange with a post-award administration office to submit one consolidated inventory annually for federally owned property under all of the awards it receives that are administered by that office, using a format its property management system already generates.

(c) *Award terms and conditions*—(1) *General.* To implement the requirement described in paragraph (a) of this section, a DoD Component's general terms and conditions must use the wording appendix C to this part provides for Section C of REP Article III. The DoD Component may add wording on due dates or on forms, formats, or data elements only as provided in paragraph (b) of this section.

(2) *Exception.* A DoD Component may reserve Section C of REP Article III if it determines that no recipients of awards using its general terms and conditions, or subrecipients of subawards under those awards, will be accountable for federally owned property under those awards or subawards.

§ 1134.320 Intangible property: Disclosures, reports, and requests.

(a) *Requirement.* REP Article III of a DoD Component's general terms and conditions must specify the requirement described in § 1134.300(a)(3) and provide the references described in § 1134.300(b)(5) and (6) to requirements in other articles for disclosures, reports, and requests related to intangible property.

(b) *Award terms and conditions*—(1) *General.* To implement the requirement described in paragraph (a) of this section, a DoD Component's general terms and conditions must use the wording appendix C to this part provides for Section D of REP Article III.

(2) *Exceptions.* A DoD Component may reserve:

(i) Section D of REP Article III if it determines that no recipients of awards using its general terms and conditions, or subrecipients of subawards under those awards, will have any intangible property for which they will be accountable to the Federal Government; or

(ii) Any of paragraphs D.1 through D.3, if it determines that no recipients of awards using its general terms and conditions, or subrecipients of subawards under those awards, will be accountable to the Federal Government for the particular types of intangible property addressed by those paragraphs.

Subpart D—Reporting on Subawards and Executive Compensation (REP Article IV)

§ 1134.400 Purpose of REP Article IV.

REP Article IV of the general terms and conditions specifies requirements for recipients to report information about subawards and executive compensation.

§ 1134.405 Content of REP Article IV.

(a) *Source of the reporting requirements.* The requirements for recipients to report information about subawards and executive compensation originate in the Federal Funding Accountability and Transparency Act of 2006, as amended (31 U.S.C. 6101 note). OMB guidance at 2 CFR part 170 implements those statutory

requirements and appendix A to that part provides standard Governmentwide wording of an award provision.

(b) *Award terms and conditions.* To implement the reporting requirements described in paragraph (a) of this section, a DoD Component's general terms and conditions must use the default wording appendix E to this part provides as REP Article IV.

Appendix A to Part 1134—Terms and Conditions for REP Article I, ''Performance Management, Monitoring, and Reporting''

DoD Components must use the following template for REP Article I, using default wording or inserting wording in lieu of reserved sections or paragraphs in accordance with §§ 1134.105 through 1134.145 of this part:

REP Article I. Performance Management, Monitoring, and Reporting. (December 2014)

Section A. Required reporting form, format, or data elements for interim and final performance reports. [Reserved.]

Section B. Frequency, reporting periods, and due dates for interim performance reports. [Reserved.]

Section C. Due date and reporting period for final performance report.

1. *Due date.* You must submit the final performance report under this award no later than 90 calendar days after the end date of the period of performance unless we approve an extension of that due date as described in Section D of this article.

2. *Reporting period.* [Reserved.]

Section D. Extensions of due dates. You may request extensions of the due dates that Sections B and C of this Article specify for interim and final reports, respectively. You must provide the reasons for your request and we will approve extensions that are adequately justified.

Section E. Reporting significant developments. You must report the following information to us as soon as you become aware of it:

1. Problems, delays, or adverse conditions that will materially impair your ability to meet the objectives of this award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

2. Favorable developments which will enable you to meet schedules and objectives sooner or at less cost than anticipated or produce more or different beneficial results than originally planned.

Section F. Performance reporting procedures. [Reserved.]

Section G. Site visits. We reserve the right to make site visits as warranted to monitor program performance under this award.

Appendix B to Part 1134—Terms and Conditions for REP Article II, ''Financial Reporting''

DoD Components must use the following template for REP Article II, inserting wording in each of sections A, B, and D and adjusting the default wording of Section E, if needed, in accordance with § 1134.210 of this part:

REP Article II. Financial Reporting. (December 2014)

Section A. Required reporting form, format, or data elements for interim and final financial reports. [Reserved.]

Section B. Interim financial reports: Frequency, reporting periods, and due dates. [Reserved.]

Section C. Final financial report. You must submit the final financial report under this award no later than 120 calendar days after the end date of the period of performance.

Section D. Extensions of due dates. You may request extensions of the due dates that Sections B and C of this Article specify for interim and final reports, respectively. You must provide the reasons for your request, and we will approve extensions that are adequately justified.

Section E. Where and how to submit financial reports. [Reserved.]

Appendix C to Part 1134—Terms and Conditions for REP Article III, ''Reporting On Property''

DoD Components must use the following template for REP Article III in accordance with §§ 1134.305 through 1134.320 of this part:

REP Article III. Reporting on Property. (December 2014)

Section A. Real property. Paragraphs A.1 through A.4 apply to real property for which you are accountable under this award, for as long as there is a Federal interest in the property (whether that interest is due to you or a subrecipient having acquired or improved the property under this award, or a transfer of the accountability for the property to this award from another award).

1. *Periodic status reports.* You must submit periodic status reports, as follows:

a. *Frequency and duration of reporting requirement.* [Reserved.]

b. *Due dates.* [Reserved.]

c. *Other submission instructions.* [Reserved.]

2. *Notifications of critical changes.* You must notify the award administration office of any critical change in the status of real property as soon as feasible after you become aware of it. A critical change is any event with a significant adverse impact on the condition or value of the property, such as damage due to fire; flood, hurricane, or other severe weather; earthquake; or accident.

3. *Requests for disposition instructions.* You must comply with applicable requirements in PROP Article III to request disposition instructions, either during the period of performance or at closeout.

4. *Closeout accounting.* You must account to the award administration office for real property at the time of closeout of the award, as required by Section D of OAR Article VI.

Section B. Equipment and supplies. Paragraphs B.1 through B.4 apply to equipment or supplies for which you are accountable under this award and in which there is a Federal interest (whether that interest is due to you or a subrecipient having acquired or improved the property under this award, or a transfer of the accountability for the property to this award from another award).

1. *Periodic status report.* There is no requirement for periodic reporting during the period of performance.

2. *Notifications of loss, damage, or theft.* You must comply with applicable requirements in PROP Article II governing your property management system to promptly notify the award administration office of any loss, damage, or theft of equipment.

3. *Requests for disposition instructions.* You must comply with applicable requirements in PROP Article IV to request disposition instructions for equipment, either during the period of performance or at closeout.

4. *Closeout accounting.*

a. *Equipment.* You must account to the award administration office for equipment at the time of closeout of this award, as required by Section D of OAR Article VI.

b. *Supplies.* If you have a residual inventory of unused supplies that meets the criteria specified in paragraph E.2 of PROP Article IV, you must as part of your closeout accounting arrange with the award administration office for the compensation that paragraph specifies for the Federal interest in the supplies.

Section C. Federally owned property. Paragraphs C.1 through C.3 apply to federally owned property for which you are accountable under this award.

1. *Annual inventory.* You must submit annually to the award administration office an inventory of federally owned property.

2. *Notifications of loss, damage, or theft.* As provided in PROP Article II governing your property management system, you must promptly notify the award administration office of any loss, damage, or theft of federally owned property.

3. *Requests for disposition instructions.* You must comply with requirements in Section B of PROP Article V to request disposition instructions, either during the period of performance or at closeout.

4. *Closeout accounting.* Your requests for disposition instructions for federally owned property, as described in paragraph C.3 of this section, satisfy the need to account for federally owned property at closeout (see Section D of OAR Article VI).

Section D. Intangible property. Paragraphs D.1 through D.3 apply to intangible property for which you are accountable under this award.

1. *Inventions developed under the award.* You must submit all reports on subject inventions developed under this award that are required by the modified Governmentwide patent rights award provision specified in Section B of PROP Article VI, which include a disclosure of each subject invention and a final report listing all such subject inventions.

2. *Copyrights and data.* You are not required to submit periodic reports about data produced under the award or about works for which you acquired ownership under this award, either by development or otherwise, and in which copyright was asserted. However, because the Federal Government has the rights in the works and data that Sections A and C of PROP Article VI specify, you must provide information about the works and data if we request it.

3. *Intangible property acquired, but not developed or produced, under the award.* You must comply with requirements in Section D of PROP Article VI to request disposition instructions for intangible property acquired, but not developed or produced, under the award.

Appendix D to Part 1134—Terms and Conditions for REP Article IV, ''Reporting on Subawards and Executive Compensation''

DoD Components must use as REP Article IV the following default wording in accordance § 1134.405 of this part:

REP Article IV. Reporting on Subawards and Executive Compensation. (December 2014)

You must report information about subawards and executive compensation as specified in the award provision in appendix A to 2 CFR part 170, ''Reporting subaward and executive compensation information,'' modified as follows:

1. To accommodate any future designation of a different Governmentwide Web site for reporting subaward information, the Web site ''*http://www.fsrs.gov*'' cited in paragraphs a.2.i. and a.3 of the award provision is replaced by the phrase ''*http://www.fsrs.gov* or successor OMB-designated Web site for reporting subaward information'';

2. To accommodate any future designation of a different Governmentwide Web site for reporting executive compensation information, the Web site ''*http://www.sam.gov*'' cited in paragraph b.2.i. of the award provision is replaced by the phrase ''*https://www.sam.gov* or successor OMB-designated Web site for reporting information on total compensation''; and

3. The reference to ''Sec. ___.210 of the attachment to OMB Circular A–133, 'Audits of States, Local Governments, and Non-Profit Organizations''' in paragraph e.3.ii of the award provision is replaced by ''2 CFR 200.330, as implemented in SUB Article I of this award''.

PART 1136—OTHER ADMINISTRATIVE REQUIREMENTS: GENERAL AWARD TERMS AND CONDITIONS

Sec.
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Appendix E to Part 1136—Terms and Conditions for OAR Article V, ''Collection of amounts due''
Appendix F to Part 1136—Terms and Conditions for OAR Article VI, ''Closeout''
Appendix G to Part 1136—Terms and Conditions for OAR Article VII, ''Post-closeout adjustments and continuing responsibilities''

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

§ 1136.1 Purpose of this part.

(a) This part specifies standard wording of general terms and conditions concerning submission and maintenance of recipient information; records retention and access; remedies for noncompliance and termination; claims, disputes, and appeals; collection of amounts due; closeout; and after-the-award requirements.

(b) It thereby implements OMB guidance in multiple portions of 2 CFR part 200, as those portions apply to general terms and conditions. Specifically, this part implements:

(1) 2 CFR 200.113 and 200.210(b)(1)(iii);

(2) 2 CFR 200.300(b) as it refers to requirements in 2 CFR part 25; and

(3) 2 CFR 200.333 through 200.345.

§ 1136.2 Applicability of this part.

The types of awards and entities to which this part and other parts in this subchapter apply are described in the subchapter overview at 2 CFR 1126.2.

§ 1136.3 Exceptions from requirements of this part.

Exceptions are permitted from the administrative requirements in this part only as described at 2 CFR 1126.3.

§ 1136.4 Organization of this part.

(a) The content of this part is organized into subparts and associated appendices.

(1) Each subpart provides direction to DoD Components on how to construct one article of general terms and conditions for grants and cooperative agreements.

(2) For each subpart, there is a corresponding appendix with standard wording for terms and conditions of the article addressed by the subpart. Terms and conditions address rights and responsibilities of the Government and recipients.

(b) A DoD Component must use the wording provided in each appendix in accordance with the direction in the corresponding subpart. That direction may permit DoD Components to vary from the standard wording in some situations.

(c) The following table shows which article of general terms and conditions may be found in each of appendices A through G to this part (with the associated direction to DoD Components in subparts A through G, respectively):

In . . .	You will find terms and conditions specifying recipients' rights and responsibilities related to . . .	That would appear in an award within OAR Article . . .
Appendix A	Submitting and maintaining recipient information	I.
Appendix B	Records retention and access	II.
Appendix C	Remedies and termination	III.
Appendix D	Claims, disputes, and appeals	IV.
Appendix E	Collection of amounts due	V.
Appendix F	Closeout	VI.

In . . .	You will find terms and conditions specifying recipients' rights and responsibilities related to . . .	That would appear in an award within OAR Article . . .
Appendix G	Post-closeout adjustments and continuing responsibilities	VII.

Subpart A—Submitting and Maintaining Recipient Information (OAR Article I)

§ 1136.100 Purpose of OAR Article I.

OAR Article I sets forth requirements for recipients to maintain current information about themselves in the data system the Government specifies as the repository for standard information about its business partners, currently the System for Award Management. The article thereby implements OMB guidance in:

(a) 2 CFR 200.113 and 200.210(b)(1)(iii);

(b) 2 CFR part 25; and

(c) The portion of 2 CFR 200.300(b) that cites 2 CFR part 25 and the System for Award Management).

§ 1136.105 Content of OAR Article I.

To implement the requirement described in § 1136.100, DoD Components' general terms and conditions must use the standard wording appendix A to this part provides as OAR Article I. A DoD Component may reserve Section B of the article in its general terms and conditions if it is certain that there will be no award using those general terms and conditions for which the Federal share of the award's total value will exceed $500,000.

Subpart B—Records Retention and Access (OAR Article II)

§ 1136.200 Purpose of OAR Article II.

OAR Article II addresses rights and responsibilities concerning retention of records related to awards; access to recipients' records; and collection, transmission, and storage of information. The article thereby implements OMB guidance in 2 CFR 200.333 through 200.337.

§ 1136.205 Records retention period.

(a) *OMB guidance.* OMB guidance in:

(1) The lead-in paragraph of 2 CFR 200.333 sets a standard retention period that is generally applicable to recipient records pertinent to Federal awards.

(2) 2 CFR 200.333(c) and (f) provide different standard retention periods specifically for records that are related either to real property and equipment acquired with Federal funds or to indirect cost rate proposals and cost allocation plans.

(b) *DoD implementation.* A DoD Component's general terms and conditions must specify the standard retention periods described in paragraph (a) of this section.

(c) *Award terms and conditions*—(1) *General.* A DoD Component's general terms and conditions must use the wording appendix B to this part provides for Section A of OAR Article II.

(2) *Exception.* A DoD Component's general terms and conditions may substitute alternative wording for paragraph A.3 of OAR Article II if the awards using those terms and conditions will be renewed quarterly or annually. The alternative wording for awards that will be renewed quarterly or annually would replace the words ''final financial report'' in paragraph A.3 with ''quarterly financial report'' or ''annual financial report,'' respectively.

§ 1136.210 Extensions of retention period due to litigation, claim, or audit.

(a) *OMB guidance.* OMB guidance in:

(1) 2 CFR 200.333(a) provides for an extended retention period for records involved in a litigation, claim, or audit that begins before the end of the standard 3-year retention period.

(2) 2 CFR 200.333(b) provides that a recipient also is required to extend the retention period when a Federal awarding, cognizant, or oversight agency notifies it in writing to do so.

(b) *DoD implementation.* (1) A DoD Component's general terms and conditions must provide for extended retention periods for records involved in a litigation, claim, or audit that begins before the end of the standard 3-year retention period, as described in 2 CFR 200.333(a).

(2)(i) With the one exception described in paragraph (b)(2)(ii) of this section, DoD Components may not require recipients to extend the records retention period as described in 2 CFR 200.333(b).

(ii) A DoD Component's general terms and conditions must extend the ''retention period,'' as that term is used in 2 CFR 200.344(a), to include the entire period during which recipients retain their records, even if that period extends beyond the standard 3-year retention period described in § 1136.205. That extension will enable disallowance of costs and recovery of funds based on an audit or other review of records a recipient elected to retain beyond the standard retention period, even if the audit or review began after the end of that retention period. Without that extension, the ability to disallow costs and recover funds would be limited by 2 CFR 200.344(a), which states that an agency must make any disallowance determination about a recipient's costs and notify the recipient within the record retention period.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions must use the wording appendix B to this part provides for Section B of OAR Article II.

§ 1136.215 Records for program income earned after the end of the performance period.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.333(e) provides the retention period for records related to program income earned after the end of the period of performance, for instances when an agency establishes requirements governing the disposition of program income earned after that time.

(b) *DoD implementation.* A DoD Component's general terms and conditions should not establish retention requirements for records related to program income earned after the end of the period of performance. Retention requirements for those records in general terms and conditions would be inconsistent with the statement in 2 CFR 1128.725 that a DoD Component should rarely, if ever, establish a requirement for a recipient to be accountable for program income earned after the end of the period of performance. Section 1128.725 provides for use of general terms and conditions wording in FMS Article VII that establishes no such requirement. Section 1128.725 further states that exceptions for individual awards are properly addressed at the time of award in the award-specific terms and conditions.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions must use the wording appendix B to this part provides for Section C of OAR Article II. If a DoD Component includes a requirement in the award-specific terms and conditions of a particular award for the recipient to be accountable for program income earned after the end of the period of performance, it also may include a requirement in the award-specific terms and conditions for the recipient's retention of the associated records.

§ 1136.220 Records for joint or long-term use.

(a) *OMB guidance.* OMB guidance in:

(1) 2 CFR 200.334 states that a Federal awarding agency must request that a recipient transfer records to its custody if the agency determines that the records have value that warrants long-term retention. It also provides that the agency may instead arrange for the recipient to retain records that are continuously needed for joint use.

(2) 2 CFR 200.333(d) exempts records transferred to a Federal agency from the standard records retention requirement.

(b) *DoD implementation.* A DoD Component's general terms and conditions must inform recipients that they may be asked to transfer records, maintain them for joint use, or retain them for a longer period of time.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions must use the wording appendix B to this part provides for Section D of OAR Article II.

§ 1136.225 Methods for collecting, transmitting, and storing information.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.335 addresses the use of electronic and paper formats in the collection, transmission, and storage of information related to awards.

(b) *DoD implementation.* A DoD Component's general terms and conditions must include provisions consistent with the guidance in 2 CFR 200.335 for recipients' use of electronic and paper formats to collect, transmit, and store information.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions must use the wording appendix B to this part provides for Section E of OAR Article II.

§ 1136.230 Access to records.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.336 and 200.337 addresses Federal Government and public access to recipient records related to awards.

(b) *DoD implementation.* A DoD Component's general terms and conditions must provide for Government access to records consistent with 2 CFR 200.336 and address public access to records to implement the guidance in 2 CFR 200.337.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions must use the wording appendix B to this part provides for Section F of OAR Article II.

Subpart C—Remedies and Termination (OAR Article III)

§ 1136.300 Purpose of OAR Article III.

OAR Article III addresses remedies for noncompliance, including suspension and termination of awards. It thereby implements OMB guidance in 2 CFR 200.338 through 200.340 and 200.342.

§ 1136.305 Content of OAR Article III.

(a) *Requirement.* A DoD Component's general terms and conditions must specify remedies available for addressing noncompliance with award terms and conditions, policies and procedures related to termination of awards, and effects of suspension and termination on allowability of costs.

(b) *Award terms and conditions.* To implement the requirement in paragraph (a) of this section, a DoD Component's general terms and conditions must use the wording appendix C to this part provides for OAR Article III.

Subpart D—Claims, Disputes, and Appeals (OAR Article IV)

§ 1136.400 Purpose of OAR Article IV.

OAR Article IV addresses claims, disputes, and appeals under awards. It thereby provides the award terms and conditions required by the DoD Grant and Agreement Regulations at 32 CFR 22.815 and also implements OMB guidance in 2 CFR 200.341.

§ 1136.405 Content of OAR Article IV.

(a) *Requirement.* The DoD Grant and Agreement Regulations at 32 CFR 22.815 require DoD Components' general terms and conditions to incorporate the procedures set forth in that section for processing claims and disputes and deciding appeals of grants officer's decisions.

(b) *Award terms and conditions*—(1) *General.* To implement the requirement in paragraph (a) of this section, a DoD Component's general terms and conditions must use the wording appendix D to this part provides for OAR Article IV, with wording inserted in lieu of the reserved paragraph A.2 to identify the Component's cognizant Grant Appeal Authority and provide his or her mailing or email address.

(2) *Exception.* A DoD Component may add one or more sections to the wording appendix D to this part provides for OAR Article IV to state a requirement that recipients must provide opportunities to subrecipients for hearings, appeals, or other administrative proceedings with respect to claims, disputes, remedies for noncompliance, or other matters if:

(i) That requirement is in a statute or regulation adopted in the Code of Federal Regulations after opportunity for public comment; and

(ii) The statutory or regulatory requirement applies to awards using the DoD Component's general terms and conditions.

Subpart E—Collection of Amounts Due (OAR Article V)

§ 1136.500 Purpose of OAR Article V.

OAR Article V addresses procedures for establishing, appealing, and collecting debts under DoD awards. It thereby:

(a) Provides requirements for recipients paralleling those for DoD Components in the DoDGARs at 32 CFR 22.820;

(b) Augments requirements of OAR Article IV in any case in which a claim leads to a determination that a recipient owes an amount to DoD; and

(c) Implements OMB guidance in 2 CFR 200.345.

§ 1136.505 Content of OAR Article V.

(a) *Requirement.* A DoD Component's general terms and conditions must specify how grants officers' decisions establish debts under awards, when debts become delinquent, how and when recipients may appeal, and how debts not paid in a timely manner are referred for debt collection.

(b) *Award terms and conditions.* To implement the requirement in paragraph (a) of this section, a DoD Component's general terms and conditions must use the wording appendix E to this part provides for OAR Article V.

Subpart F—Closeout (OAR Article VI)

§ 1136.600 Purpose of OAR Article VI.

OAR Article VI addresses recipients' responsibilities for closeout of awards and subawards under them. The article thereby implements OMB guidance in 2 CFR 200.343.

§ 1136.605 Content of OAR Article VI.

(a) *Requirement.* A DoD Component's general terms and conditions must specify requirements related to closeout of awards and subawards, including recipients' liquidations of obligations, refunds of unobligated balances, and submission of final reports.

(b) *Award terms and conditions*—(1) *General.* To implement the requirement in paragraph (a) of this section, a DoD Component's general terms and conditions must use the wording appendix F to this part provides for OAR Article VI.

(2) *Exception related to due dates for final reports other than performance, financial, and invention reports.* Consistent with OMB guidance in 2 CFR 200.343(a), a DoD Component may grant extensions to due dates for final reports.

(i) To pre-approve a 30-day extension for final reports other than performance, financial, and invention reports, a DoD Component may substitute ''120 calendar days'' for ''90 calendar days'' in the default wording appendix F to this part provides for paragraph C.4 of OAR Article VI. These pre-approved 30-day extensions in the general terms and conditions are for all awards using those terms and conditions; they therefore are separate and distinct from any additional extensions a recipient may later request for an individual award.

(ii) The parallel authorities for pre-approved extensions of due dates for final performance, financial, and invention reports are elsewhere. DoDGARs provisions in:

(A) 2 CFR 1134.125 authorize a DoD Component to pre-approve a 30-day extension for due dates of performance reports by an appropriate substitution of wording in REP Article I of the general terms and conditions.

(B) 2 CFR 1134.210 provide default wording in REP Article II that pre-approves a 30-day extension for due dates of financial reports.

(C) 2 CFR 1130.610 authorize a DoD Component to pre-approve a 30-day extension for due dates of final reports listing subject inventions under awards by an appropriate substitution of wording in PROP Article VI of the general terms and conditions.

Subpart G—Post-Closeout Adjustments and Continuing Responsibilities (OAR Article VII)

§ 1136.700 Purpose of OAR Article VII.

OAR Article VII addresses post-closeout funding adjustments and recipients' continuing responsibilities after award closeout. It thereby implements OMB guidance in 2 CFR 200.344.

§ 1136.705 Content of OAR Article VII.

(a) *Requirement.* A DoD Component's general terms and conditions must specify the rights and responsibilities of the Government and recipients with respect to funding adjustments and recipients' continuing responsibilities after award closeout.

(b) *Award terms and conditions.* To implement the requirement in paragraph (a) of this section, a DoD Component's general terms and conditions must use the wording appendix G to this part provides for OAR Article VII.

Appendix A to Part 1136—Terms and Conditions for OAR Article I, ''Submitting and Maintaining Recipient Information''

DoD Components must use as OAR Article I the following standard wording in accordance with § 1136.105 of this part:

OAR Article I. Submitting and Maintaining Recipient Information. (December 2014)

Section A. System for award management.

1. Unless you are exempted from this requirement in accordance with OMB guidance in 2 CFR 25.110, you must maintain the currency of information about yourself in the system the Federal Government specifies as the repository for information about its business partners (currently the System for Award Management (SAM)).

2. You must maintain the information in that system until you submit the final financial report required under this award or receive the final payment, whichever is later.

3. You must review and update the information at least annually after your initial registration in the system (unless you are subject to the requirements in Section B) and more frequently if required by changes in your information.

Section B. Reporting of performance and integrity information.

1. *General reporting requirement.* If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal agencies exceeds $10,000,000 for any period of time during the period of performance of this award, then during that period of time you must maintain in SAM the currency of information required by paragraph B.2 of this section. Note that:

a. This reporting is required under section 872 of Public Law 110–417, as amended (41 U.S.C. 2313).

b. As required by section 3010 of Public Law 111–212, all performance and integrity information posted in the designated information system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

c. Recipient information is submitted to the OMB-designated integrity and performance system through the SAM, as described in paragraph B.3 of this section. The currently designated integrity and performance information system is the Federal Awardee Performance and Integrity Information System (FAPIIS).

2. *Proceedings about which you must report.* Submit the information that the designated information system requires about each proceeding that:

a. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;

b. Reached its final disposition during the most recent 5 year period; and

c. Is one of the following:

i. A criminal proceeding that resulted in a conviction, as defined in paragraph B.5. of this section;

ii. A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of $5,000 or more;

iii. An administrative proceeding, as defined in paragraph B.5. of this section, that resulted in a finding of fault and liability and your payment of either monetary fine or penalty of $5,000 or more or a reimbursement, restitution, or damages in excess of $100,000; or

iv. Any other criminal, civil, or administrative proceeding if:

A. It could have led to an outcome described in paragraph B.2.c.i, ii, or iii of this section;

B. It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and

C. The requirement in this section to disclose information about the proceeding does not conflict with applicable laws and regulations.

3. *Reporting procedures.* Submit the information required in paragraph B.2 of this section to the Entity Management functional area of the SAM.

a. Current procedures are to submit the information as part of the maintenance of your information in the SAM that Section A of this article requires.

b. You do not need to submit the information again under this award if you already reported current information to the SAM under another Federal grant, cooperative agreement, or procurement contract.

4. *Reporting frequency.* During any period of time when you are subject to the requirement in paragraph B.1 of this section, you must report to SAM at least semiannually following your initial report of any information required in paragraph B.2 of this section, either to provide new information not reported previously or affirm that there is no new information to report.

5. *Definitions.* For purposes of this section:

a. *Administrative proceeding* means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (*e.g.*, Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract, grant, or cooperative agreement. It does not include audits, site visits, corrective plans, or inspection of deliverables.

b. *Conviction* means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

c. *Total value of currently active grants, cooperative agreements, and procurement contracts* includes:

i. Only the Federal share of the funding under any Federal agency award with a recipient cost share or match; and

ii. The value of all expected funding increments and options, even if not yet exercised, under each Federal agency award.

Section C. Disclosure of evidence of integrity-related issues.

1. *Disclosure requirement.* At any time during the period of performance of this

award, if you have evidence that a covered person committed a covered action (see paragraphs C.2 and C.3 of this section) that may affect this award, you must disclose the evidence in writing to the Office of the Inspector General, DoD, with a copy to the grants officer identified in the award cover pages.

2. *Covered person.* As the term is used in this section, ''covered person'' means a principal, employee, or agent of either you or a subrecipient under this award, where:

a. ''Principal'' means:

i. An officer, director, owner, partner, principal investigator, or other person with management or supervisory responsibilities that relate to this award; or

ii. A consultant or other person, whether or not employed by you or a subrecipient or paid with funds under this award, who:

A. Is in a position to handle funds under this award;

B. Is in a position to influence or control the use of those funds; or

C. Occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the project or program under this award.

b. ''Agent'' means any individual who acts on behalf of, or who is authorized to commit you or the subrecipient, whether or not employed by you or the subrecipient.

3. *Covered action.* As the term is used in this section, ''covered action'' means a violation of Federal criminal law in Title 18 of the United States Code involving fraud, bribery, or a gratuity violation.

4. *Safeguarding of the information.*

a. To the extent permitted by law and regulation, we will:

i. Safeguard and treat information you disclose to us as confidential if you mark the information as ''confidential'' or ''proprietary.''

ii. Not release the information to the public in response to a Freedom of Information Act (5 U.S.C. 552) request without notifying you in advance.

b. We may transfer documents you provide to us to any other department or agency within the Executive Branch of the Federal Government if the information relates to matters within that organization's jurisdiction.

Appendix B to Part 1136—Terms and Conditions for OAR Article II, ''Records Retention And Access''

DoD Components must use the following standard wording in OAR Article II in accordance with §§ 1136.205 through 1136.230 of this part, which allow alternative wording in paragraph A.3:

OAR Article II. Records Retention and Access. (December 2014)

Section A. Records retention period. Except as provided in Sections B through D of this article:

1. You must keep records related to any real property and equipment acquired, in whole or in part, using Federal funds under the award for 3 years after final disposition of the property. For any item of exempt property with a current fair market value greater than $5,000, and for which final disposition was not a condition of the title vesting, you must keep whatever records you need for as long as necessary to ensure that you can deduct the Federal share if you later use the property in contributions for cost sharing or matching purposes under any Federal award.

2. You must keep records related to rate proposals for indirect or facilities and administration costs, cost allocation plans, and supporting records such as indirect cost rate computations and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback or composite fringe benefit rates) as follows:

a. If you are required to submit a proposal, plan, or other computations to your Federal cognizant agency for indirect costs, as the basis for negotiation of a rate, you must keep the submissions and all supporting records for 3 years from the date on which you were required to make the submissions.

b. If you are not required to submit a proposal, plan, or other computation as the basis for negotiation, you must keep the proposal, plan, other computation, and supporting records for 3 years from the end of the fiscal year or other accounting period covered by the proposal, plan, or other computation.

3. You must keep other financial records, supporting documents, statistical records, and other records pertinent to this award for a period of 3 years from the date you submit your final financial report under the award.

Section B. Extensions of retention period due to litigation, claim, or audit.

1. If any litigation, claim, or audit begins before the end of the 3-year retention period specified in Section A of this article and the final action related to the litigation, claim, or audit is not taken before the end of that 3-year period, you must retain all records related to this award that may be involved in the litigation, claim, or audit until all findings involving the records have been resolved and final action taken.

2. We may disallow costs and recover funds under this award based on an audit or other review of records you elected to retain beyond the retention period required by this article, even if the audit or review begins after the end of the 3-year retention period specified in Section A of this article. Thus, the ''retention period,'' as that term is used in OMB guidance in 2 CFR 200.344(a)(1), is extended as described in 2 CFR 200.333(b) to include the entire period during which we and our authorized representatives continue to have access to those records under paragraph F.2 of this article.

Section C. Records for program income earned after the end of the performance period. In accordance with Section F of FMS Article VII, there are no requirements under this award applicable to program income you earn after the end of the period of performance and therefore no associated records retention requirements.

Section D. Records for joint or long-term use.

1. *Joint use.* To avoid duplicate recordkeeping for records that you and we both need to use on a continuous basis, we may ask you to make special arrangements with us, by mutual agreement, to make records available for joint and continuous use.

2. *Long-term use.* If we determine that some records will be needed longer than the 3-year period specified in Section A of this article, we may request that you either:

a. Retain the records for a longer period of time; or

b. Transfer the records to our custody for long-term retention.

3. *Retention requirements for transferred records.* For any records transferred to our custody, you are not subject to the records retention requirements in Section A of this article.

Section E. Methods for collecting, transmitting, and storing information.

1. You should, whenever practicable, collect, transmit, and store information related to this award in open and machine readable formats rather than in closed formats or on paper. However, if you request it, we will:

a. Provide award related-information to you on paper; and

b. Accept award related-information from you on paper. In that case, we will not require more than an original and two copies.

2. When your original records are in an electronic form that cannot be altered, you do not need to create and retain paper copies of those records.

3. When your original records are on paper, you may substitute electronic versions produced through duplication or using other forms of electronic media, provided that:

a. You conduct periodic quality control reviews of the records;

b. You provide reasonable safeguards against alteration of the records; and

c. The records remain readable.

Section F. Access to records.

1. *Scope of Government access rights.*

a. We as the awarding agency, the Federal Government Inspectors General, the Comptroller General of the United States, and any of our authorized representatives have the right of access to any documents, papers, or other records you have that are pertinent to this award, in order to make audits, examinations, excerpts, and transcripts.

b. This right also includes timely and reasonable access to your personnel for the purposes of interview and discussion related to the records.

c. As described in OMB guidance at 2 CFR 200.336(b), the access to records described in this section will include access to the true name of a victim of a crime only under extraordinary and rare circumstances.

i. You are required to provide that access only in response to a court order or subpoena pursuant to a bona fide confidential investigation, or in response to a request duly authorized by the head of the DoD Component or his or her designee; and

ii. You must take appropriate steps to protect this sensitive information.

2. *Duration of Government access rights.* We have the access rights described in paragraph F.1 of this section as long as you retain the records.

3. *Public access.*

a. You must comply with requirements to protect information that Federal statute, Executive order, or regulation requires to be protected (*e.g.*, personally identifiable or export controlled information), to include both information generated under this award and information provided to you and identified as being subject to protection. Other than those limitations on dissemination of information, we place no restrictions on you that limit public access to your records pertinent to this award.

b. We do not place any requirements on you to permit public access to your records separate from any Federal, State, local, or tribal statute that may require you to do so.

c. The Freedom of Information Act (FOIA, 5 U.S.C. 552) does not apply to records in your possession but records you provide to us generally will be subject to FOIA, with the applicable exemptions.

Appendix C to Part 1136—Terms and Conditions for OAR Article III, ''Remedies and Termination''

DoD Components must use the following standard wording in OAR Article III in accordance with § 1136.305 of this part:

OAR Article III. Remedies and Termination. (December 2014)

Section A. Remedies for noncompliance.

1. If you materially fail to comply with a term or condition of this award or an applicable Federal statute or regulation, we may amend this award to impose specific additional conditions as described in OMB guidance in 2 CFR 200.207. If we determine that the imposition of those additional conditions is insufficient to remedy the noncompliance, we may take one or more of the following actions that we deem appropriate to the circumstances:

a. Temporarily withhold cash payments pending:

i. Your correction of the deficiency; or

ii. Our taking more severe enforcement action.

b. Disallow (that is, deny both use of funds and any applicable cost-sharing or matching credit for) all or part of the cost of the activity or action not in compliance;

c. Suspend or terminate this award, in whole or in part (suspension of an award is a separate and distinct action from suspension of a person under 2 CFR parts 180 and 1125, as noted in paragraph A.3 of this article);

d. Withhold further awards to you for the project or program that is not in compliance;

e. Take any other action legally available to us under the circumstances.

2. You may raise an objection to our taking any remedy we take under paragraph A.1 of this section and will be given an opportunity to provide information and documentation challenging the action. The procedures are those specified in OAR Article IV for claims and disputes.

3. Our use of any remedy under paragraph A.1 of this section, including suspension or termination of the award, does not preclude our referring the noncompliance to a suspension and debarment official and asking that official to consider initiating a suspension or debarment action under 2 CFR part 1125, the DoD implementation of OMB guidance at 2 CFR part 180.

Section B. Termination.

1. This award may be terminated in whole or in part as follows:

a. *Unilaterally by the Government.* We will provide a notice of termination if we unilaterally terminate this award in whole or in part, which we may do for either of the following reasons:

i. Your material failure to comply with the award terms and conditions. If we terminate the award for that reason, we will report the termination to the OMB-designated integrity and performance system (currently FAPIIS). In accordance with 41 U.S.C. 2313, each Federal awarding official must review and consider the information in the OMB-designated integrity and performance system with regard to any proposal or offer before awarding a grant or contract.

ii. The program office does not have funding for an upcoming increment if this award is incrementally funded. In that case, the Government's financial obligation does not exceed the amount currently obligated under the award.

b. *By mutual agreement.* With your consent, we may terminate this award, in whole or in part, for any reason. In that case, you and we must agree to:

i. The termination conditions, including the effective date; and

ii. In the case of a partial termination, the portion to be terminated.

c. *Unilaterally by the recipient.* You may unilaterally terminate this award, in whole or in part, by sending us written notification that states:

i. The reasons for the termination;

ii. The effective date; and

iii. In the case of partial termination, the portion to be terminated. In that case, however, we may terminate the award in its entirety if we determine that the remaining portion of the award will not accomplish the purposes for which we made the award.

2. If this award is terminated in its entirety before the end of the performance period, you must complete the closeout actions for which you are responsible under OAR Article VI. The due date for each action is to be measured relative to the date of termination.

3. If this award is only partially terminated before the end of the performance period, with a reduced or modified portion of the award continuing through the end of the performance period, then closeout actions will occur at the end of the performance period as specified in OAR Article VI.

4. You will continue to have all of the post-closeout responsibilities that OAR Article VII specifies for you if this award is wholly or partially terminated before the end of the performance period.

Section C. Effects of suspension or termination of the award on allowability of costs. If we suspend or terminate this award prior to the end of the period of performance, costs resulting from obligations that you incurred:

1. Before the effective date of the suspension or termination are allowable if:

a. You properly incurred those obligations;

b. You did not incur the obligations in anticipation of the suspension or termination;

c. In the case of termination, the costs resulted from obligations that were noncancellable after the termination; and

d. The costs would have been allowable if we had not suspended or terminated the award and it had expired normally at the end of the period of performance.

2. During the suspension or after the termination are not allowable unless we expressly authorize them, either in the notice of suspension or termination or subsequently.

Appendix D to Part 1136—Terms and Conditions for OAR Article IV, ''Claims, Disputes, and Appeals''

DoD Components must use the following standard wording in OAR Article IV in accordance with § 1136.405 of this part:

OAR Article IV. Claims, Disputes, and Appeals. (December 2014)

Section A. Definitions.

1. *Claim.* The definition of the term ''claim,'' as it is used in this article, is in the definitions section of the preamble to these general terms and conditions.

2. *Grant Appeal Authority.* [Reserved.]

Section B. Submission of claims.

1. *Your claims.* To submit a claim arising out of this award, you must submit it in writing to the grants officer for decision, specify the nature and basis for the relief you are requesting, and include all data that supports your claim.

2. *Government claims.* You will receive a written grants officer's decision if a DoD claim arises out of this award.

Section C. Alternative dispute resolution.

1. We encourage resolution of all issues related to this award by mutual agreement between you and the grants officer.

2. If you and the grants officer are unable to resolve an issue through unassisted negotiations, we encourage use of Alternative Dispute Resolution (ADR) procedures to try to do so. ADR procedures are any voluntary means, such as mini-trials or mediation, used to resolve issues in controversy. ADR procedures may be used prior to submission of a claim or at any other time prior to the Grant Appeal Authority's decision on any appeal you submit.

Section D. Grants officer decisions for claims you submit.

1. Within 60 calendar days of receiving your claim, the grants officer will either:

a. Transmit a written decision that:

i. Identifies data on which the decision is based; and

ii. Identifies and provides the mailing address for the Grant Appeal Authority to whom you would submit an appeal of the decision if you elect to do so; or

b. If more time is required to render a written decision, notify you of a specific date when he or she will render the decision and inform you of the reason for delaying it.

2. The grants officer's decision will be final unless you decide to appeal, in which case we encourage use of ADR procedures as noted in Section C of this article.

Section E. Formal administrative appeals.

1. *Right to appeal.* You have the right to appeal a grants officer's decision to the Grant Appeal Authority identified in Section A of this article.

2. *Notice of appeal.* You may appeal a grants officer's decision within 90 calendar days of receiving the decision by submitting a written notice of appeal to the Grant Appeal Authority and grants officer. If you elect to use ADR procedures, you are allowed an additional 60 calendar days to submit the written notice of appeal.

3. *Appeal file.* Within 30 calendar days of the grants officer's receipt of your notice of appeal, you should receive the appeal file with copies of all documents relevant to the appeal. You may supplement the file with other documents you deem relevant and with a memorandum in support of your position for the Grant Appeal Authority's consideration. The Grant Appeal Authority may request additional information from you.

4. *Decision.* Unless the Grant Appeal Authority decides to conduct fact-finding procedures or an oral hearing on the appeal, the appeal will be decided solely on the basis of the written record. Any fact-finding or hearing will be conducted using procedures that the Grant Appeal Authority deems appropriate.

Section F. Representation. You may be represented by counsel or any other designated representative in any claim, appeal, or ADR proceeding, as long as the representative is not otherwise prohibited by law or regulation from appearing before the DoD Component concerned.

Section G. Non-exclusivity of remedies. Nothing in this article is intended to limit your right to any remedy under the law.

Appendix E to Part 1136—Terms and Conditions for OAR Article V, ''Collection Of Amounts Due''

DoD Components must use the following standard wording in OAR Article V in accordance with § 1136.505 of this part:

OAR Article V. Collection of Amounts Due. (December 2014)

Section A. Establishing a debt.

1. Any amount paid to you in excess of the amount to which you are determined to be entitled under the terms and conditions of this award constitutes a debt to the Federal Government.

2. A grants officer will attempt to resolve any claim of your indebtedness arising out of this award by mutual agreement.

3. If the grants officer fails to resolve the claim in that manner, you will receive a written notice of the grants officer's decision formally determining the debt, as described in paragraph B.2 of OAR Article IV. The notice will describe the debt, including the amount, name and address of the official who determined the debt, and a copy of that official's determination.

Section B. Debt delinquency and appeals.

1. Within 30 calendar days of the grants officer's decision, you must either pay the amount owed to the address provided in the written notice or inform the grants officer that you intend to appeal the decision. Appeal procedures are described in OAR Article IV.

2. If you elect not to appeal, any amounts not paid within 30 calendar days of the grants officer's decision will be a delinquent debt.

3. If you elect to appeal the grants officer's decision, you will have 90 calendar days after receipt of the grants officer's decision to file your appeal unless Alternative Dispute Resolution (ADR) procedures are used, as described in section C of OAR Article IV, in which case you will have 150 calendar days.

Section C. Demand letter, interest, and debt collection.

1. If within 30 calendar days of the grants officer's decision, you neither pay the amount due nor provide notice of your intent to appeal the grants officer's decision, the grants officer will send you a demand letter identifying a payment office that will be responsible for any further debt collection activity.

2. If you do not pay by the due date specified in the written demand letter, the Federal Government may collect part or all of the debt by:

a. Making an administrative offset against your requests for reimbursements under Federal awards;

b. Withholding advance payments otherwise due to you; and

c. Any other action permitted by Federal statute.

3. The debt will bear interest, and may include penalties and other administrative costs, in accordance with applicable provisions of the DoD Financial Management Regulation (DoD 7000.14–R), which implements the Federal Claims Collection Standards. The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

Appendix F to Part 1136—Terms and Conditions for OAR Article VI, ''Closeout''

DoD Components must use the following standard wording in OAR Article VI in accordance with § 1136.605 of this part:

OAR Article VI. Closeout. (December 2014)

Section A. Liquidation of obligations. Unless the award administration office authorizes an extension of the due date, you must liquidate all obligations that you incurred under this award not later than 120 calendar days after the end date of the period of performance.

Section B. Refunds of unobligated balances. You must promptly refund to the award administration office any balances of unobligated cash that we have advanced or paid to you and not authorized you to use on other projects or programs.

Section C. Final reports. You must submit the:

1. Final performance report under this award no later than the date specified in Section C of REP Article I, subject to any extensions granted under Section D of that article;

2. Final financial report under this award no later than the date specified in Section C of REP Article II, subject to any extensions granted under Section D of that article;

3. Final report listing subject inventions made under the award no later than the date specified in Section B of PROP Article VI; and

4. Other final reports that are required under this award no later than 90 calendar days after the end date of the period of performance, unless you request an extension of the due date and the award administration office approves the request.

Section D. Accounting for property. You must account for any real property, equipment, supplies, and intangible property that you and any subrecipients acquired or improved under the award, in accordance with PROP Articles I through IV and VI. Your requests for disposition instructions for any federally owned property, as required by PROP Article V, meet the need described in OMB guidance at 2 CFR 200.343(f) to account for that property at closeout.

Appendix G to Part 1136—Terms and Conditions for OAR Article VII, ''Post-Closeout Adjustments and Continuing Responsibilities''

DoD Components must use the following standard wording in OAR Article VII in accordance with § 1136.705 of this part:

OAR Article VII. Post-Closeout Adjustments and Continuing Responsibilities. (December 2014)

Section A. Adjustments. The closeout of this award does not affect:

1. Our right to disallow costs and recover funds on the basis of a later audit or other review, as long as we make the determination that the costs are disallowed and notify you about that determination within the extended records retention period specified in paragraph B.2 of OAR Article II of these terms and conditions.

2. Your obligation to return any funds due to the Federal Government as a result of later refunds, corrections, or other transactions (to include any adjustments in final indirect cost rates).

Section B. Continuing responsibilities. After closeout of this award, you must continue to comply with terms and conditions of this award that have applicability beyond closeout, including requirements concerning:

1. Audits, as specified in FMS Article V that cover periods of time during which you expended funds under this award.

2. Management, use, and disposition of any real property or equipment acquired under this award in which we continue to have a Federal interest after closeout, as specified in PROP Articles I through IV.

3. Retention of, and access to, records related to this award, as specified in OAR Article II.

PART 1138—REQUIREMENTS RELATED TO SUBAWARDS: GENERAL AWARD TERMS AND CONDITIONS

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Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

§ 1138.1 Purpose of this part.

(a) This part specifies standard wording of general terms and conditions concerning recipients' award and administration of subawards under DoD grants and cooperative agreements.

(b) It thereby implements OMB guidance in subparts A through F of 2 CFR part 200 and 2 CFR parts 25, 170, and 180, as they apply to subawards.

§ 1138.2 Applicability of this part.

The types of awards and entities to which this part and other parts in this subchapter apply are described in the subchapter overview at 2 CFR 1126.2.

§ 1138.3 Exceptions from requirements of this part.

Exceptions are permitted from the administrative requirements in this part only as described at 2 CFR 1126.3.

§ 1138.4 Organization of this part.

(a) The content of this part is organized into subparts and associated appendices.

(1) Each subpart provides direction to DoD Components on how to construct one article of general terms and conditions for grants and cooperative agreements.

(2) For each subpart, there is a corresponding appendix with standard wording for terms and conditions of the article addressed by the subpart. Terms and conditions address rights and responsibilities of the Government and recipients.

(b) A DoD Component must use the wording provided in each appendix in accordance with the direction in the corresponding subpart and the authorization in § 1138.5, which permit a DoD Component to vary from the standard wording in some situations.

(c) The following table shows which article of general terms and conditions may be found in each of appendices A through L to this part (with the associated direction to DoD Components in subparts A through L, respectively, as supplemented by the authorization in § 1138.5):

In . . .	You will find terms and conditions specifying recipients' rights and responsibilities related to . . .	That would appear in an award within SUB Article . . .
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Appendix G	Financial, programmatic, and property reporting requirements for subawards.	VII.

In . . .	You will find terms and conditions specifying recipients' rights and responsibilities related to . . .	That would appear in an award within SUB Article . . .
Appendix H	Other administrative requirements for subawards	VIII.
Appendix I	National policy requirements for subawards	IX.
Appendix J	Subrecipient monitoring and other post-award administration	X.
Appendix K	Requirements concerning subrecipients' lower-tier subawards	XI.
Appendix L	Fixed-amount subawards	XII.

§ 1138.5 Authority to omit or reserve portions of SUB Articles I through XII.

A DoD Component's general terms and conditions may:

(a) Omit SUB Articles II through XII that are the subject of this part if the DoD Component does not allow recipients to make subawards under awards using those terms and conditions. The DoD Component also may amend SUB Article I in that case, to state the prohibition on making subawards and limit the recipient's responsibility to ensuring that any transaction it awards at the next tier is a procurement transaction.

(b) Reserve portions of SUB Articles I through XII that do not apply to the DoD Component's awards using those terms and conditions. For example, the DoD Component may reserve paragraphs in SUB Articles IV through IX specifying administrative requirements that flow down solely to subawards to States if it determines that there is no possibility of a subaward to a State under any of the awards using its general terms and conditions. Similarly, it may reserve SUB Article XII if it does not permit any fixed-amount subawards under its awards.

Subpart A—Distinguishing Subawards and Procurements (SUB Article I)

§ 1138.100 Purpose of SUB Article I.

SUB Article I specifies requirements for a recipient to determine whether each transaction it makes at the next tier below a DoD grant or cooperative agreement is a subaward or a procurement transaction. It thereby implements OMB guidance in 2 CFR 200.201(a) and 200.330.

§ 1138.105 Content of SUB Article I.

(a) *Requirement.* A DoD Component's general terms and conditions must:

(1) Require the recipient to determine the nature of transactions it makes under its award; and

(2) Inform the recipient about the effect of that determination on the procedures for awarding the transaction and the transaction's terms and conditions.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions must use the wording appendix A to this part provides for SUB Article I.

Subpart B—Pre-Award and Time of Award Responsibilities (SUB Article II)

§ 1138.200 Purpose of SUB Article II.

SUB Article II specifies requirements concerning subrecipients' unique entity identifiers and pre-award risk assessments. It also references requirements in REP Article IV to report on subawards and subrecipients' executive compensation. It thereby partially implements OMB guidance in:

(a) 2 CFR parts 25 and 170;

(b) 2 CFR 200.207; 200.300(b), as it applies to subaward reporting; and 200.331(b); and

(c) Subpart C of 2 CFR part 180, as implemented by DoD at 2 CFR part 1125.

§ 1138.205 Content of SUB Article II.

(a) *Requirement.* A DoD Component's general terms and conditions must require the recipient to:

(1) Obtain an entity's unique entity identifier before making a subaward to the entity;

(2) Notify potential subrecipients in advance about that requirement; and

(3) Conduct a pre-award risk assessment of an entity before making a subaward to the entity and adjust subaward terms and conditions if warranted by the results of the assessment.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions must use the wording appendix B to this part provides for SUB Article II.

Subpart C—Informational Content of Subawards (SUB Article III)

§ 1138.300 Purpose of SUB Article III.

SUB Article III specifies information that recipients must include in subawards they make under DoD grants and cooperative agreements. It thereby implements OMB guidance in 2 CFR 200.331(a)(1).

§ 1138.305 Content of SUB Article III.

(a) *Requirement.* A DoD Component's general terms and conditions must require recipients to include certain information items in each subaward they make.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions must use the wording appendix C to this part provides for SUB Article III.

Subpart D—Financial and Program Management Requirements for Subawards (SUB Article IV)

§ 1138.400 Purpose of SUB Article IV.

SUB Article IV specifies the financial and program management requirements that recipients must include in subawards they make under DoD grants and cooperative agreements. It thereby implements OMB guidance in the following portions of 2 CFR part 200, as they apply to subawards:

(a) Sections 200.209 and 200.302 through 200.309; and

(b) Subparts E and F.

§ 1138.405 Content of SUB Article IV.

(a) *Requirement.* A DoD Component's general terms and conditions must require recipients to include pertinent requirements concerning financial and program management in each subaward they make.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions must use the wording appendix D to this part provides for SUB Article IV.

Subpart E—Property Requirements for Subawards (SUB Article V)

§ 1138.500 Purposes of SUB Article V in relation to other articles.

(a) *Purposes.* SUB Article V specifies requirements concerning equipment, supplies, and real, intangible, and federally owned property that recipients must include in subawards they make under DoD grants and cooperative agreements. It thereby:

(1) Specifies which of the requirements in PROP Articles I through VI of the award flow down to subawards; and

(2) Implements OMB guidance in 2 CFR 200.310 through 200.316, as those sections apply to subawards.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions must use the default wording appendix E to this part provides as Section A of SUB Article V to inform

recipients about the relationship between requirements for the recipient in PROP Articles I through VI and requirements for subawards in SUB Article V.

§ 1138.505 Title to property under subawards.

(a) *Requirement.* A DoD Component's general terms and conditions must specify requirements related to title to property under subawards.

(b) *Award terms and conditions*—(1) *General.* A DoD Component's general terms and conditions must use the default wording appendix E to this part provides as Section B of SUB Article V to specify the requirements concerning title to property that recipients must include in their subawards.

(2) *Exception.* If a DoD Component has the necessary statutory authority to do so and includes provisions in paragraph A.2 of PROP Article I to identify any property acquired under the award as exempt property, as described in 2 CFR 1130.105, the DoD Component may at its option insert wording in paragraph B.1.b of SUB Article V to allow recipients to pass through those provisions to subrecipients.

(i) It is critical, however, that the DoD Component ensures that the wording of paragraph B.1.b is consistent with the statutory authority.

(ii) For example, if the statutory authority is 31 U.S.C. 6306—as described in 2 CFR 1130.105(b)(2)(i)—the wording of paragraph B.1.b of SUB Article V may permit a recipient to flow down the substance of the exempt property provision in paragraph A.2 of PROP Article I only to a subrecipient that is a nonprofit institution of higher education or nonprofit organization whose primary purpose is conducting scientific research.

§ 1138.510 Property management system requirements for subawards.

(a) *Requirement.* DoD Components' general terms and conditions must address the standards for property management systems that apply to subawards.

(b) *Award terms and conditions.* To specify the property management system standards that recipients must include in their subawards, a DoD Component's general terms and conditions must use the default wording appendix E to this part provides as Section C of SUB Article V.

§ 1138.515 Use and disposition of real property, equipment, supplies, and federally owned property under subawards.

(a) *Requirement.* A DoD Component's general terms and conditions must specify the requirements concerning use and disposition of real property, equipment, supplies, and federally owned property that recipients must include in subawards.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions must use the default wording appendix E to this part provides for Sections D through F of SUB Article V.

§ 1138.520 Intangible property under subawards.

(a) *Requirement.* A DoD Component's general terms and conditions must address the provisions concerning intangible property that recipients must include in subawards.

(b) *Award terms and conditions*—(1) *General.* To specify the intangible property provisions that recipients must include in their subawards, a DoD Component's general terms and conditions must use the default wording appendix E to this part provides as Section G of SUB Article V.

(2) *Exception.* A DoD Component's general terms and conditions may delete the reference to ''Section B of PROP Article VI'' in the default wording appendix E to this part provides for paragraph G.2 of SUB Article V and provide alternative wording if:

(i) Those general terms and conditions will be used in awards for purposes other than research or education, as described in 2 CFR 1130.610(c)(3); and

(ii) The DoD Component wants to specify that nonprofit and governmental recipients include either:

(A) No provisions concerning inventions in subawards to for-profit entities; or

(B) Provisions in subawards to for-profit entities that differ from those the DoD Component's general terms and conditions specify for nonprofit and governmental recipients.

Subpart F—Procurement Procedures To Include in Subawards (SUB Article VI)

§ 1138.600 Purpose of SUB Article VI.

SUB Article VI of the general terms and conditions specifies procurement provisions recipients must include in their subaward terms and conditions. It thereby:

(a) Specifies which of the requirements in PROC Articles I through III of the award flow down to subawards; and

(b) Implements OMB guidance in 2 CFR 200.317 through 200.326 and appendix II to 2 CFR part 200, as those portions of 2 CFR part 200 apply to subawards; and

(c) Partially implements OMB guidance in 2 CFR 200.205(d), 200.213, and 200.517, as those sections of 2 CFR part 200 apply to subawards.

§ 1138.605 Content of SUB Article VI.

(a) *Requirement.* A DoD Component's general terms and conditions must specify that recipients' subawards include requirements for subrecipients' procurement procedures.

(b) *Award terms and conditions.* To specify the requirements for procurement procedures that a recipient must include in its subawards, a DoD Component's general terms and conditions must use the wording appendix F to this part provides for SUB Article VI.

Subpart G—Financial, Programmatic, and Property Reporting Requirements for Subawards (SUB Article VII)

§ 1138.700 Purposes of SUB Article VII in relation to other articles.

(a) *Purposes.* SUB Article VII of the general terms and conditions specifies provisions concerning reporting that recipients must include in their subaward terms and conditions, as applicable. It thereby implements OMB guidance in the following sections of 2 CFR part 200, as they apply to subawards:

(1) 2 CFR 200.301 and 200.327 through 200.329; and

(2) 2 CFR 200.315(c), as it relates to invention reporting; and

(3) 2 CFR 200.343(a), as it relates to financial and performance reporting.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions must use the default wording appendix G to this part provides as Section A of SUB Article VII to inform recipients about the relationship between requirements for the recipient in REP Articles I through III and requirements for subawards in SUB Article VII.

§ 1138.705 Performance reporting requirements for subawards.

(a) *Requirement.* A DoD Component's general terms and conditions must specify performance reporting requirements for subawards.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions must use the default wording appendix G to this part provides as Section B of SUB Article VII to specify the performance reporting requirements that recipients must include in their subawards.

§ 1138.710 Financial reporting requirements for subawards.

(a) *Requirement.* A DoD Component's general terms and conditions must

specify financial reporting requirements for subawards.

(b) *Award terms and conditions.* appendix G to this part provides default wording for Section C of SUB Article VII to specify the financial reporting requirements that recipients must include in their subawards.

§ 1138.715 Reporting on property under subawards.

(a) *Requirement.* A DoD Component's general terms and conditions must specify the requirements for reporting on property that recipients must include in their subawards.

(b) *Award terms and conditions.* To implement the requirement described in paragraph (a) of this section, a DoD Component's general terms and conditions must use the wording appendix G to this part provides as Section D of SUB Article VII.

Subpart H—Other Administrative Requirements for Subawards (SUB Article VIII)

§ 1138.800 Purpose of SUB Article VIII.

SUB Article VIII of the general terms and conditions:

(a) Specifies provisions that a recipient must include in its subaward terms and conditions concerning submission and maintenance of subrecipient information; records retention and access; remedies and termination; disputes, hearings, and appeals; collection of amounts due; closeout; and post-closeout adjustments and continuing responsibilities.

(b) It thereby implements OMB guidance in 2 CFR 200.113 and 200.333 through 200.345, as those sections apply to subawards.

§ 1138.805 Content of SUB Article VIII.

(a) *Requirement.* A DoD Component's general terms and conditions must specify the administrative requirements that a recipient must include in its subaward terms and conditions in areas covered by OAR Articles I through VII of the recipient's prime award.

(b) *Award terms and conditions*—(1) *General.* To implement the requirement in paragraph (a) of this section, a DoD Component's general terms and conditions must use the default wording appendix H to this part provides for SUB Article VIII.

(2) *Exception.* A DoD Component's general terms and conditions may add one or more sections to the default wording that appendix H to this part provides for SUB Article VIII if the DoD Component added requirements to OAR Article IV of its general terms and conditions, in accordance with paragraph 2 CFR 1136.405(b)(2), because a statute or regulation requires recipients to provide opportunities to subrecipients for hearings, appeals, or other administrative proceedings with respect to claims, disputes, remedies for noncompliance, or other matters. The additional wording in SUB Article VIII would address the flow down to subrecipients of the added requirements in OAR Article IV.

Subpart I—National Policy Requirements for Subawards (SUB Article IX)

§ 1138.900 Purpose of SUB Article IX.

SUB Article IX addresses national policy requirements that recipients must include in their subaward terms and conditions. It thereby partially implements OMB guidance in 2 CFR 200.331(a)(2).

§ 1138.905 Content of SUB Article IX.

(a) *Requirement.* A DoD Component's general terms and conditions must specify which of the national policy requirements in NP Articles I through IV of the award flow down to subawards.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions:

(1) Must use the wording appendix B to this part provides for SUB Article IX if the DoD Component did not add, delete, or otherwise modify any of the wording that appendices A through D of 2 CFR part 1122 provided for NP Articles I through IV of the award (as permitted in accordance with DoDGARs provisions at 2 CFR 1122.115 and 1122.120).

(2) May make corresponding alterations to the wording appendix I to this part provides for SUB Article IX if the DoD Component did modify the wording of NP Articles I through IV, in order to conform the national policy requirements in SUB Article IX to the requirements in those modified articles.

Subpart J—Subrecipient Monitoring and Other Post-Award Administration (SUB Article X)

§ 1138.1000 Purpose of SUB Article X.

SUB Article X specifies the requirements for recipients' monitoring of subrecipients and related post-award administration of subawards they make under DoD grants and cooperative agreements. It thereby implements OMB guidance in 2 CFR 200.331(d) through (h) and 2 CFR 200.340(a).

§ 1138.1005 Content of SUB Article X.

(a) *Requirement.* A DoD Component's general terms and conditions must specify requirements for recipients' monitoring of subrecipients and related post-award administration of subawards.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions must use the wording appendix J to this part provides for SUB Article X of its general terms and conditions.

Subpart K—Requirements Concerning Subrecipients' Lower-Tier Subawards (SUB Article XI)

§ 1138.1100 Purpose of SUB Article XI.

SUB Article XI specifies requirements that a recipient must include in any subaward under which it judges that the subrecipient may make lower-tier subawards. It thereby implements OMB guidance in 2 CFR 200.331(a) through (c) and other portions of 2 CFR part 200 as they apply to lower-tier subawards.

§ 1138.1105 Content of SUB Article XI.

(a) *Requirement.* A DoD Component's general terms and conditions must address requirements that recipients must include in subawards to entities that may make lower-tier subawards.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions must use the wording appendix K to this part provides for SUB Article XI.

Subpart L—Fixed-Amount Subawards (SUB Article XII)

§ 1138.1200 Purpose of SUB Article XII.

SUB Article XII specifies policy and procedures concerning recipients' use of fixed-amount subawards under DoD grants and cooperative agreements. It thereby implements OMB guidance in 2 CFR 200.201(b) and 200.332 and other portions of 2 CFR part 200 as they apply to fixed-amount subawards.

§ 1138.1205 Content of SUB Article XII.

(a) *Requirement.* A DoD Component's general terms and conditions must address how a recipient may use a fixed-amount type of subaward, when it requires the Component's prior approval to do so, and what requirements the recipient must include in those subawards.

(b) *Award terms and conditions*—(1) *General.* A DoD Component's general terms and conditions must use the wording appendix L to this part provides for SUB Article XII.

(2) *Exceptions.*

(i) In addition to the authorities provided in § 1138.5 to omit or reserve all or portions of the wording appendix L to this part provides for SUB Article XII, a DoD Component's general terms and conditions may add wording to Section B of the article to authorize

recipients to use fixed-amount subawards without obtaining the Component's prior approval in other situations for which it would be appropriate to do so, given the nature of the program or programs that use its general terms and conditions.

(ii) However, a DoD Component's general terms and conditions should never authorize recipients' use of fixed-amount subawards for basic or applied research, for the reason given in paragraph B.2.a.ii of the wording appendix L provides for SUB Article XII. It is unrealistic to have a subrecipient commit in advance to accomplishing specific, well-defined, and observable research outcomes. Doing so subjects the subrecipient to undue risk of not being reimbursed for research costs it incurred if it fails to fully accomplish the outcomes.

Appendix A to Part 1138—Terms and Conditions for SUB Article I, ''Distinguishing Subawards and Procurements''

DoD Components must use the following standard wording in SUB Article I in accordance with § 1138.105 of this part:

SUB Article I. Distinguishing Subawards and Procurements. (December 2014)

Section A. Required recipient determination. For each transaction into which you enter with another entity at the next tier below this award, you must determine whether the transaction is a subaward or procurement.

Section B. Considerations in making the determination.

1. The primary purpose of the transaction between you and the other entity is the key factor you must use to determine whether the transaction is a subaward or a procurement.

a. The transaction is a subaward and the other entity therefore a subrecipient if the transaction's primary purpose is for you to transfer—-for performance by the other entity—-a portion of the substantive program for which we are providing financial assistance to you through this award. You will continue to be accountable to us for performance of the project or program under the award, including portions performed by any subrecipients.

b. The transaction is a procurement and the other entity therefore your contractor if the transaction's primary purpose is for you to purchase goods or services that you need to perform the substantive program supported by this award. The distinction from a subaward is the contractor is not performing a portion of the substantive program as a result of the transaction.

2. What you call the transaction is not a factor in distinguishing a subaward from a procurement. If the transaction meets the criterion in paragraph B.1.a of this article, it is a subaward for purposes of the requirements of this award even if you call and consider the transaction a ''contract.''

Section C. Effect of the determination on the next-tier transaction.

1. *Process for awarding the transaction.* One important consequence of your determining whether a next-tier transaction is a subaward or procurement is that there are different requirements governing the pre-award and time of award processes that you use to award the transaction.

a. SUB Article II of this award specifies pre-award and time of award responsibilities for subawards.

b. PROC Articles I and II of this award govern pre-award and time of award process for awarding procurement transactions.

2. *Transaction terms and conditions.* A second important consequence of your determining whether a next-tier transaction is a subaward or procurement is that the terms and conditions you include in a subaward differ from those you include in a procurement transaction.

a. Section C of SUB Article II of this award addresses requirements you must include in subaward terms and conditions. Those requirements are generally either identical with or directly related to requirements in the general terms and conditions of this award. They include national policy requirements as well as administrative requirements in areas such as financial and programmatic management, property administration, procurement, and reporting.

b. PROC Article III of this award lists requirements you must include in a procurement transaction when applicable to the procurement.

Appendix B to Part 1138—Terms and Conditions for SUB Article II, ''Pre-Award and Time of Award Responsibilities''

DoD Components must use the following standard wording in SUB Article II in accordance with § 1138.205 of this part:

SUB Article II. Pre-Award and Time of Award Responsibilities. (December 2014)

Section A. Requirements for unique entity identifiers.

1. *Definition of ''entity.''* For purposes of the unique entity identifier requirements in paragraphs A.2 and 3 of this section, ''entity'' has the meaning given in paragraph C.3 of appendix A to OMB guidance in 2 CFR part 25.

2. *Pre-notification of potential subrecipients.* You must notify potential subrecipients that no entity may receive a subaward from you under this award unless it has provided its unique entity identifier to you.

3. *Restriction on making subawards.*

a. *General.* You may not make a subaward to an entity unless the entity has provided its unique entity identifier to you.

b. *Exception.* You may make a subaward to an entity that has not provided its unique entity identifier to you in rare cases in which you requested and we approved an exemption from the requirement for the entity to provide a unique entity identifier, based on the criteria in OMB guidance in 2 CFR part 25.110(d).

Section B. Pre-award risk assessment.

1. Before making a subaward to an entity, you must perform a risk assessment of the prospective subrecipient, as described in 2 CFR 200.331(b). OMB guidance in 2 CFR 200.205(c) provides examples of factors you may consider in evaluating risk.

2. As part of the risk assessment under paragraph B.1 of this article, you must:

a. Verify that neither the prospective subrecipient nor its principals under the subaward are excluded or disqualified from participating in the transaction, in accordance with requirements in Subpart C of OMB guidance in 2 CFR part 180, as implemented by DoD at 2 CFR part 1125; and

b. If warranted by risks you identify, determine whether to impose award-specific terms and conditions in the subaward to mitigate the risks.

i. These award-specific terms and conditions may be in addition to, or differ from, the terms and conditions that SUB Articles IV through IX of this award require you to include in subawards.

ii. They may include items such as those listed in OMB guidance in 2 CFR 200.207(b)(1) through (6).

iii. Your procedures for imposing and removing the additional or different requirements must comply with the procedural guidance in 2 CFR 200.207(c) and (d).

Section C. Subaward content.

1. *Cost-type subawards.*

a. SUB Article III of this award specifies informational content that you must include in each cost-type subaward.

b. SUB Articles IV through VIII specify administrative requirements that you must include:

i. As applicable, in each cost-type subaward to:

A. A domestic U.S. entity (*i.e.,* an entity other than a foreign public entity or a foreign organization); or

B. An organizational unit of a foreign organization if that unit has a place of business in the United States; and

ii. To the maximum extent practicable in each cost-type subaward to either a foreign public entity or an organizational unit of a foreign organization that does not have a place of business in the United States (regardless of whether another organizational unit of that foreign organization has one). However, absent our prior approval, you may not allow that foreign entity or organization to acquire real property or equipment under a subaward.

c. SUB Article IX of this award specifies national policy requirements that you must include, as applicable, in each cost-type subaward.

2. *Fixed-amount type subawards.* SUB Article XII of this award specifies informational content and administrative and national policy requirements that you must include in any fixed-amount subaward that you make.

3. *Additional subaward terms and conditions.* You may include other requirements in your subawards that you need in order to meet your responsibilities under this award for performance of the project or program (including portions performed by subrecipients) and compliance with applicable administrative and national policy requirements.

Section D. Subaward and executive compensation reporting. You must report

subaward obligating actions and information on subrecipients' executive compensation as required by REP Article IV of this award.

Appendix C to Part 1138—Terms and Conditions for SUB Article III, ''Informational Content of Subawards''

DoD Components must use the following standard wording in SUB Article III in accordance with § 1138.305 of this part:

SUB Article III. Informational Content of Subawards. (December 2014)

Section A. Informational content in general. You must include in each subaward (and each subsequent amendment to a subaward that alters the amount of the subaward) the information specified in OMB guidance in 2 CFR 200.331(a)(1), ''Federal Award Identification,'' with the clarifications provided in Sections B through G of this article.

Section B. Federal award identification number and award date. The ''Federal Award Identification Number'' and ''Federal Award Date'' described in 2 CFR 200.331(a)(1)(iii) and (iv), respectively, are the award number and award date for this award to you. You must provide the information in a way that makes it clear that the subaward is under this DoD award.

Section C. Amount of Federal funds obligated.

1. The ''Amount of Federal Funds Obligated by this action by the pass-through entity to the subrecipient'' that is described in 2 CFR 200.331(a)(1)(vi) is either:

a. The amount of your obligation to the subrecipient, if the terms and conditions of this award do not require you to provide any cost sharing or matching for the project or program the award supports; or

b. The amount of the Federal share of your subaward obligation if this award does require cost sharing or matching, which in that case is the product of:

i. The Federal share of total project costs under this DoD award to you, as a percentage of those total project costs; and

ii. The total amount of project costs obligated for the subaward action.

2. Note that the total project costs of the award and subaward, as used in paragraphs C.1.b.i and ii of this section, include any cost sharing or matching that you or the subrecipient provides if you are counting it toward the cost sharing or matching required under this award.

Section D. Total amount obligated to the subrecipient. The ''Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity including the current obligation,'' as described in 2 CFR 200.331(a)(1)(vii), is the cumulative amount to date of the amounts described in Section C of this article.

Section E. Total Amount of the Federal Award. The ''Total Amount of the Federal Award committed to the subrecipient by the pass-through entity,'' as described in 2 CFR 200.331(a)(1)(viii), is the total amount through the end of the subaward that you and the subrecipient mutually agreed upon, to include: funding obligated to date, any future anticipated funding increments, and any options you may exercise in the future.

Section F. Federal awarding agency, pass-through entity, and awarding official. The ''Name of Federal awarding agency'' and ''pass-through entity,'' as those terms are used in 2 CFR 200.331(a)(1)(x) are the Department of Defense and the business name associated with your registration in the System for Award Management. In that same paragraph of 2 CFR part 200, the ''awarding official'' is the individual in your organization who made the subaward.

Section G. Indirect cost rate. With respect to the requirement in 2 CFR 200.331(a)(1)(xiii) for the subaward to include the ''Indirect cost rate for the Federal award:''

1. The rate the subaward must include is the subrecipient's rate, whether it is a rate set by negotiation with a Federal Government agency or you, or is the de minimis rate described in 2 CFR 200.414(f).

2. You are required to include the indirect cost rate only if the subrecipient is willing to share that information with you and assents that information about its rate is not proprietary. If a subrecipient is not willing to share information about its indirect cost rate with you, consult the grants officer for this award to explore alternative ways to assess the reasonableness of costs of the subaward.

Appendix D to Part 1138—Terms and Conditions for SUB Article IV, ''Financial and Program Management Requirements for Subawards''

DoD Components must use the following standard wording in SUB Article IV in accordance with § 1138.405 of this part:

SUB Article IV. Financial and Program Management Requirements for Subawards. (December 2014)

Section A. Purposes of this article in relation to other articles.

1. This article specifies administrative requirements concerning financial and program management that you must include in the terms and conditions of each cost-type subaward that you make under this award to a domestic entity.

2. It thereby addresses the flow down to subrecipients of requirements with which you must comply under FMS Articles I through VII of this award.

3. SUB Article XII of this award addresses which of these administrative requirements you must include in any fixed-amount subaward that you make, if you are authorized to make fixed-amount subawards under this award.

Section B. Financial management system standards. You must include in any subaward you make under this award the requirements of:

1. Sections A through C of FMS Article I of this award if the subrecipient is a state;

2. Sections B and C of FMS Article I if the subrecipient is an institution of higher education, nonprofit organization, local government, or Indian tribe; or

3. 32 CFR 34.11 if the subrecipient is a for-profit entity.

Section C. Payments.

1. *Subawards to States.* You must include the provisions of Section A of FMS Article II of this award in each subaward you make to a State;

2. *Subawards to institutions of higher education, nonprofit organizations, local governments, and Indian tribes.* The following paragraphs specify requirements you must include in subawards to institutions of higher education, nonprofit organizations, local governments, and Indian tribes.

a. *Payment method.*

i. If you are authorized to request advance payments under this award, you must authorize a subrecipient to request advance payments unless:

A. The subrecipient does not maintain, or demonstrate the willingness to maintain, written procedures that minimize the time elapsing between its receipt of each payment and its disbursement of the funds for project or program purposes;

B. You impose a requirement for the subrecipient to be paid by reimbursement as a result of your risk evaluation of the subrecipient under SUB Article II of this award.

C. The subaward is for construction.

ii. If you do not authorize advance payments for one of the reasons given in paragraph C.2.a.i of this article, you must specify either reimbursement or working capital advances as the payment method in accordance with OMB guidance in 2 CFR 200.305(b)(3) and (4).

b. *Payment timing and amount.*

i. *Advances.* You must limit advance payments to the minimum amounts needed and time the payments to be in accordance with the subrecipient's actual, immediate cash requirements in carrying out the project or program under the subaward. The timing and amount of your advance payments to the subrecipient must be as close as is administratively feasible to the subrecipient's actual disbursements for direct project costs and the proportionate share of any allowable indirect costs. Your subawards also must include the requirements of paragraphs B.2.b and c of FMS Article II to specify costs subrecipients must exclude from amounts of their advance payment requests.

ii. *Reimbursements or working capital advances.* You must follow OMB guidance in 2 CFR 200.305(b)(3) and (4) concerning timing and amount of reimbursements or working capital advances.

c. *Frequency of requests.* You must allow the subrecipient to request advance payments or reimbursements, including those associated with the working capital advance payment method, as often as it wishes if you pay using electronic funds transfers and at least monthly otherwise.

d. *Other requirements.*

i. In any subaward that was subject to our consent, you must include the requirements of paragraph B.5 of FMS Article II of this award concerning withholding of payments.

ii. You must include the provisions of paragraph B.6 of FMS Article II concerning depositories in each subaward that authorizes the subrecipient to request advance payments.

3. *Subawards to for-profit entities.* The provision concerning payments in each subaward you make to a for-profit entity

must conform to the requirements in 32 CFR 34.12.

Section D. Allowable costs, period of availability of funds, and fee and profit.

1. You must include in each cost-type subaward a requirement that the allowability of costs under the subaward (and any lower-tier subawards or procurement transactions into which the subrecipient enters) must be determined in accordance with the applicable cost principles identified in Section A of FMS Article III of this award, as well as the clarification in Section B of that article if it applies to those cost principles.

2. You must specify in each subaward the period of availability of funds for any project or program purpose so that the period neither begins before nor ends after the period during which you may use funds available to you under this award for that same project or program purpose.

3. You must include in each subaward the provisions concerning fee or profit that are in Section D of FMS Article III of this award.

Section E. Revision of budget and program plans. You must include in each subaward provisions requiring the subrecipient to request your approval for any change in the subaward budget or program that would cause a budget or program change under this award for which Section B of FMS Article IV requires you to first obtain our prior approval. You may not approve any budget or program revision that is inconsistent with the purpose or terms and conditions of this award.

Section F. Non-Federal audits. You must include a provision in each subaward that you make under this award to require the subrecipient entity to comply with the audit requirements applicable to that entity, as specified in either Section A or Section B of FMS Article V.

Section G. Cost sharing or matching requirements. If you make a subaward under which the subrecipient may provide contributions or donations of cash or third-party in-kind contributions to be counted toward any cost sharing or matching that is required under this award, you must include provisions in that subaward to specify:

1. The criteria governing the allowability as cost sharing or matching of the types of cash or third-party in-kind contributions that the subrecipient may contribute or donate. Those criteria are specified in:

a. Sections B through D of FMS Article VI of this award if the subaward is to a State, institution of higher education, nonprofit organization, local government, or Indian tribe.

b. The provisions of 32 CFR 34.13(a) if the subaward is to a for-profit entity.

2. The methods for determining and documenting the values of those contributions or donations to be counted as cost sharing or matching. Those methods are specified in:

a. Sections E and F of FMS Article VI of this award if the subaward is to a State, institution of higher education, nonprofit organization, local government, or Indian tribe.

b. The provisions of 32 CFR 34.13(b) if the subaward is to a for-profit entity.

Section H. Program income. You must include requirements concerning program income in subawards, as follows:

1. In each subaward to a State, institution of higher education, nonprofit organization, local government, or Indian tribe:

a. You must require the subrecipient to account to you when it earns any program income under the subaward or uses it, so that you can prepare reports you are required to submit to us. If the award-specific terms and conditions of this award require you to account for program income earned after the period of performance, you must include a corresponding requirement in your subawards.

b. You must include the provisions of Sections A through D of FMS Article VII of this award.

c. You may specify the deduction, addition, or cost-sharing or matching alternative—-described in 2 CFR 1128.720(b)—or a combination of those alternatives, for the subrecipient's use of any program income it earns. However, you still must comply with the alternative specified in Section E of FMS Article VII and any applicable award-specific terms and conditions for the total amount of program income earned, which includes amounts earned by you and your subrecipients. For example, if we require you to use the deduction alternative, you may authorize a subrecipient to use the addition alternative if you reduce the funding allocated for portions of the project or program that you or other subrecipients perform to make the required reduction in the total award amount.

2. In each subaward to a for-profit entity, you must include the provisions of 32 CFR 34.14, with the appropriate method specified for disposition of program income.

Appendix E to Part 1138—Terms and Conditions for SUB Article V, ''Property Requirements for Subawards''

DoD Components must use the following standard wording in SUB Article V in accordance with §§ 1138.505 through 1138.520 of this part:

SUB Article V. Property Requirements for Subawards. (December 2014)

Section A. Purposes of this article in relation to other articles.

1. This article specifies administrative requirements concerning property that you must include in the terms and conditions of each subaward that you make under this award.

2. It thereby addresses the flow down to subrecipients of requirements with which you must comply under PROP Articles I through VI of this award.

3. SUB Article XII of this award addresses which of these administrative requirements you must include in any fixed-amount subaward that you make, if you are authorized to make fixed-amount subawards under this award.

Section B. Title to property.

1. *Subawards to institutions of higher education, nonprofit organizations, States, local governments, or Indian tribes.*

a. *General.* You must include terms and conditions in each subaward to flow down to the subrecipient the provisions of:

i. Paragraph A.1 of PROP Article I concerning vesting of title to property acquired under the subaward unless paragraph B.1.b of this section provides otherwise.

ii. Sections B through E of PROP Article I that are applicable to types of property that the subrecipient may acquire, improve, donate, or for which it may otherwise be accountable under the subaward.

b. *Exceptions.* [Reserved.]

2. *Subawards to for-profit entities.*

a. *Real property and equipment.* You must obtain the prior approval of the grants officer before permitting any for-profit subrecipient to acquire or improve real property or equipment under the award.

i. If the grants officer does not grant the approval, you must include a subaward provision that prohibits the firm from acquiring or improving real property or equipment under the subaward.

ii. If the approval is granted, you must include a subaward provision specifying that title vesting and Federal interest are governed by provisions of 32 CFR 34.21(b) and (c).

b. *Supplies.* You must include a subaward provision specifying that vesting of title to supplies is governed by provisions of 32 CFR 34.24(a), subject to the use and disposition requirements of 32 CFR 34.24(b).

c. *Federally owned property.* You must include a provision in any subaward to a for-profit entity under which the entity may be accountable for federally owned property, to state that title to such property will remain vested in the Federal Government.

Section C. Property management system. If you make a subaward under which the subrecipient either may acquire or improve equipment, or may be accountable for federally owned property, you must include in the subaward:

1. If the subrecipient is a State, applicable provisions of:

a. Section A of PROP Article II concerning insurance for real property and equipment.

b. Section B of PROP Article II concerning other property management system standards.

2. If the subrecipient is an institution of higher education, nonprofit organization, local government, or Indian tribe, applicable provisions of:

a. Section A of PROP Article II concerning insurance for real property and equipment.

b. Section C of PROP Article II concerning other property management system standards.

3. Applicable provisions of 32 CFR 34.22(a) and 34.23 if the subrecipient is a for-profit entity and:

a. The firm may be accountable under the subaward for federally owned property; or

b. You obtained the grants officer's prior approval for the firm's acquisition of equipment under the subaward.

Section D. Use and disposition of real property. If the subrecipient of a subaward you make under this award may acquire or improve real property, then you must include in the subaward:

1. *Use.* The requirements concerning use of real property:

a. In Section A of PROP Article III if the subaward is to an institution of higher

education, nonprofit organization, State, local government, or Indian tribe, unless the award-specific terms and conditions of this award provide otherwise; and

b. In 32 CFR 34.21(d) if the subaward is to a for-profit entity and you obtained the grants officer's prior approval for the firm's acquisition of real property under the subaward.

2. *Disposition.* Provisions to require the subrecipient to request disposition instructions through you when the property is no longer needed for its originally authorized purpose, so that you can meet your responsibilities to us under Section B of PROP Article III to address the Federal interest in the property.

Section E. Use and disposition of equipment and supplies. If you make a subaward under which the subrecipient may acquire or improve equipment, or acquire supplies, you must include in the subaward, as applicable:

1. If the subaward is to a State:

a. The requirements in Sections B and E of PROP Article IV concerning use and disposition of equipment and supplies; and

b. Provisions such as those in Section A of PROP Article IV that make clear the applicability of those requirements.

2. If the subaward is to an institution of higher education, nonprofit organization, local government, or Indian tribe:

a. The requirements in Sections C and E of PROP Article IV concerning use of equipment and use and disposition of supplies;

b. Provisions such as those in Section A of PROP Article IV that make clear the applicability of those requirements; and

c. Provisions to require the subrecipient to request disposition instructions from you when equipment is no longer needed for its originally authorized purpose, so that you can meet your responsibilities to us under Section D of PROP Article IV to address the Federal interest in the equipment.

3. If the subaward is to a for-profit entity:

a. The requirements concerning use and disposition of supplies in 32 CFR 34.24(b);

b. And you obtained the grants officer's prior approval for the firm's acquisition of equipment under the subaward:

i. The requirements concerning use of equipment in 32 CFR 34.21(d); and

ii. Provisions such as those in Section A of PROP Article IV that make clear the applicability of those requirements; and

iii. Provisions to require the subrecipient to request disposition instructions from you when equipment is no longer needed for its originally authorized purpose, so that you can meet your responsibilities to us under Section B or D of PROP Article IV to address the Federal interest in the equipment.

Section F. Use and disposition of federally owned property. If you make a subaward under which the subrecipient may be accountable for federally owned property, you must include subaward provisions specifying that the subrecipient:

1. May use the property for purposes specified in paragraph A.1 of PROP Article V;

2. Must submit requests through you for the award administration office's approval to use the property for other purposes, as described in paragraph A.2 of PROP Article V;

3. Must request the award administration office's disposition instructions through you when the property is no longer needed for subaward purposes or the subaward ends.

Section G. Intangible property. You must include in a subaward provisions specifying the requirements of:

1. Sections A through D of PROP Article VI if the subaward is to an institution of higher education, nonprofit organization, State, local government, or Indian tribe.

2. Section A of PROP Article VI as it applies to works developed under the subaward, Section B of PROP Article VI, and paragraph C.1 of Section C of PROP Article VI, if the subaward is to a for-profit entity.

Appendix F to Part 1138—Terms and Conditions for SUB Article VI, ''Procurement Procedures To Include in Subawards''

DoD Components must use the following standard wording in SUB Article VI in accordance with § 1138.605 of this part:

SUB Article VI. Procurement Procedures To Include in Subawards. (December 2014)

Section A. Purposes of this article in relation to other articles.

1. This article specifies administrative requirements concerning procurement procedures that you must include in the terms and conditions of each subaward that you make under this award.

2. It thereby addresses the flow down to subrecipients of requirements with which you must comply under PROC Articles I through III of this award.

3. SUB Article XII of this award addresses which of these administrative requirements you must include in any fixed-amount subaward that you make, if you are authorized to make fixed-amount subawards under this award.

Section B. Subaward to a State. In any subaward that you make to a State, you must include the requirements of PROC Article I and applicable sections of PROC Article III of this award.

Section C. Subaward to an institution of higher education, nonprofit organization, local government, or Indian tribe. In any subaward that you make to an institution of higher education, nonprofit organization, local government, or Indian tribe:

1. You must include the requirements of Sections A through G of PROC Article II and applicable sections of PROC Article III of this award.

2. You must include the requirement for the subrecipient to make available to you, upon request:

a. Technical specifications of proposed procurements, under the conditions described in OMB guidance at 2 CFR 200.324(a); and

b. Other procurement documents for pre-procurement review, under the conditions described in OMB guidance at 2 CFR 200.324(b).

3. If it is possible that, under a subaward you make, the subrecipient may award a construction or facility improvement contract with a value in excess of the simplified acquisition threshold, you must include provisions in the subaward to require the subrecipient to comply with at least the minimum requirements for bidders' bid guarantees and contractors' performance and payment bonds described in 2 CFR 200.325(a) through (c), unless you determine that the subrecipient's bonding policy and requirements are adequate to protect Federal interests.

Section D. Subaward to a for-profit entity. In any subaward you make to a for-profit entity, you must include the requirements in 32 CFR 34.31.

Appendix G to Part 1138—Terms and Conditions for SUB Article VII, ''Financial, Programmatic, and Property Reporting Requirements for Subawards''

DoD Components must use the following standard wording in SUB Article VII in accordance with §§ 1138.705 through 1138.715 of this part:

SUB Article VII. Financial, Programmatic, and Property Reporting Requirements for Subawards. (December 2014)

Section A. Purposes of this article in relation to other articles.

1. This article specifies administrative requirements concerning reporting that you must include in the terms and conditions of each subaward that you make under this award.

2. It thereby addresses the flow down to subrecipients of requirements with which you must comply under REP Articles I through III of this award.

3. SUB Article XII of this award addresses which of these administrative requirements you must include in any fixed-amount subaward that you make, if you are authorized to make fixed-amount subawards under this award.

Section B. Performance reporting.

1. You must include terms and conditions in each subaward to require the subrecipient to provide any performance information you need, by the time you need it, to comply with the performance reporting requirements in REP Article I and other terms and conditions of this award.

2. You may specify a form, format, or data elements the subrecipient uses to provide the information to you (you need not require the subrecipient to use the same form, format, or data elements this article specifies for your reporting to us).

Section C. Financial reporting.

1. You must include terms and conditions in each subaward to require the subrecipient to provide any financial information you need, by the time you need it, to comply with the financial reporting requirements in REP Article II and other terms and conditions of this award.

2. You may specify a form, format, or data elements the subrecipient must use to provide the information to you (you need not require the subrecipient to use the same form, format, or data elements that REP Article II specifies for your reporting to us).

Section D. Reporting on property.

1. Each subaward you make under this award must include provisions concerning property reporting as described in paragraph D.2 of this section if the subrecipient may, under the subaward:

a. Acquire or improve real property or equipment;

b. Acquire supplies or intangible property; or

c. Be accountable for federally owned property.

2. The subaward provisions must require the subrecipient to give you the information you need about the property in order to meet your responsibilities to us under Sections A through D of REP Article III and PROP Articles II through VI.

Appendix H to Part 1138—Terms and Conditions for SUB Article VIII, ''Other Administrative Requirements for Subawards''

DoD Components must use the following standard wording in SUB Article VIII in accordance with § 1138.805 of this part:

SUB Article VIII. Other Administrative Requirements for Subawards. (December 2014)

Section A. Purposes of this article in relation to other articles.

1. This article specifies other administrative requirements that you either must or should include in the terms and conditions of each subaward that you make under this award.

2. It thereby addresses the flow down to subrecipients of requirements with which you must comply under OAR Articles I through VII of this award.

3. SUB Article XII of this award addresses which of these administrative requirements you must include in any fixed-amount subaward that you make, if you are authorized to make fixed-amount subawards under this award.

Section B. Submission and maintenance of subrecipient information. You must include the substance of the provision in Section C of OAR Article I in any subaward you make under this award. The provision must require the subrecipient's disclosure of any evidence directly to the Inspector General, DoD.

Section C. Records retention and access. In each subaward you make under this award:

1. If the subaward is to an institution of higher education, nonprofit organization, State, local government, or Indian tribe:

a. You must include the requirements of Section A of OAR Article II with the additional condition that, for any subrecipient under this award that does not have a federally approved rate for indirect or facilities and administrative costs and that does not use the de minimis rate described in 2 CFR 200.414(f), you must:

i. Require the subrecipient to keep records that support its indirect or facilities and administrative costs charged to the subaward for 3 years from the end of the fiscal year (or other accounting period) to which the costs apply; and

ii. Keep any plan or computation the subrecipient submits to you to serve as a basis for your determining the reasonableness and allowability of indirect or facilities and administrative costs of the subaward, for 3 years from the end of the fiscal year (or other accounting period) to which the proposal, plan, or computation applies.

b. You must include the requirements of Sections B, C, and F of OAR Article II.

c. You must include provisions that enable you to comply with the requirements of Section D of OAR Article II concerning records for joint or long-term use.

d. You must include provisions that establish the same rights and responsibilities for the subrecipient under the subaward that Section E of OAR Article II establishes for you under this award.

e. You may not impose any other record retention or access requirements on the subrecipient.

2. If the subaward is to a for-profit entity, you must include the records retention and access provisions of 32 CFR 34.42.

Section D. Remedies and termination. The terms and conditions of each subaward you make under this award should specify your rights and responsibilities and those of the subrecipient if you take a remedial action to address a subrecipient's noncompliance with an applicable Federal statute or regulation or the terms and conditions of your subaward. Each subaward's terms and conditions should:

1. Identify remedial actions you may take to address the subrecipient's noncompliance. Available remedies are described in:

a. OMB guidance in 2 CFR 200.338 for a subaward to an institution of higher education, nonprofit organization, State, local government, or Indian tribe; and

b. 32 CFR 34.52 for a subaward to a for-profit entity.

2. With respect to termination specifically:

a. Identify conditions under which you, the subrecipient, or both (by mutual agreement) may terminate the subaward, in whole or in part, as described in:

i. OMB guidance in 2 CFR 200.339(a) for a subaward to an institution of higher education, nonprofit organization, State, local government, or Indian tribe; and

ii. 32 CFR 34.51 for a subaward to a for-profit entity.

b. Inform the subrecipient that you will provide it with a notice of termination if you unilaterally terminate the award.

c. Specify that you and the subrecipient remain responsible for applicable requirements addressed in Sections G and H of this article concerning closeout, post-closeout adjustments, and continuing responsibilities.

3. With respect to either suspension or termination of the subaward, inform the subrecipient about the criteria that you will use to either allow or disallow subaward costs, which are in:

a. Section C of OAR Article III for a subaward to an institution of higher education, nonprofit organization, State, local government, or Indian tribe; and

b. 32 CFR 34.52(c) for a subaward to a for-profit entity.

Section E. Disputes, hearings, and appeals. Each subaward's terms and conditions should specify any rights the subrecipient has to a hearing, appeal, or other administrative proceeding if it disputes a decision you render in administering its subaward. You must comply with any statute or regulation that affords the subrecipient an opportunity for a hearing, appeal, or other administrative proceeding and is applicable to the dispute.

Section F. Collection of amounts due. Although your subaward terms and conditions do not need to include any of the requirements of OAR Article V because those requirements do not flow down to subrecipients, you should consider including provisions to specify what you would need from the subrecipient if you owed a debt to the Government under this award that is related to its subaward.

Section G. Closeout.

1. In each subaward that you make to an institution of higher education, nonprofit organization, State, local government, or Indian tribe, you must include provisions to require the subrecipient to:

a. Liquidate all obligations that it incurred under the subaward not later than 90 calendar days after the end date of the period of performance of either the subaward or this award, whichever is earlier, unless you grant an extension.

b. Promptly refund to you any balances of unobligated cash that you advanced or paid to the subrecipient, unless you received authorization from the DoD award administration office for the subrecipient's use of those funds on other projects or programs.

c. Submit to you:

i. Any information you need from the subrecipient to meet your responsibilities to us for an accounting of property, under Section D of OAR Article VI; and

ii. Not later than 90 calendar days after the end date of the period of performance of this award, unless you grant the subrecipient an extension, any information you need to meet your responsibilities to us for final reports, under Section C of OAR Article VI.

2. In each subaward that you make to a for-profit entity, you must include the terms and conditions that you deem necessary for you to be able to comply with the requirements in OAR Article VI.

Section H. Post-closeout adjustments and continuing responsibilities.

You must include provisions in each subaward to require the subrecipient to provide what you need in order to comply with the requirements of OAR Article VII.

Appendix I to Part 1138—Terms and Conditions for SUB Article IX, ''National Policy Requirements for Subawards''

DoD Components must use the following standard wording in SUB Article IX in accordance with § 1138.905 of this part:

SUB Article IX. National Policy Requirements for Subawards. (December 2014)

Section A. General.

1. You must include provisions in the terms and conditions of each subaward you make to require the subrecipient entity's compliance with each of the national policy requirements in Sections B through E of this article that you determine is applicable,

given the type of entity receiving the subaward and activities it will be carrying out under the subaward.

2. If an entity to which you are about to make a subaward will not accept an award provision requiring its compliance with a national policy requirement that you determine to be applicable, you must alert the award administration office immediately. You may not omit an applicable national policy requirement in order to make the subaward.

3. If at any time during the performance of a subaward, you learn that—-or receive a credible allegation that—-the subrecipient is not complying with an applicable national policy requirement, you must alert the award administration office immediately.

Section B. Nondiscrimination national policy requirements. You must include provisions in each subaward to require the subrecipient's compliance with the nondiscrimination national policy requirements specified in paragraphs A.1 through A.5 of NP Article I, as applicable.

Section C. Environmental national policy requirements. You must include provisions in each subaward to require that:

1. The subrecipient comply with all applicable Federal environmental laws and regulations, including those specified in paragraph A.2, A.3, A.5, and A.6 of NP Article II, as applicable.

2. Provide any information you need, when you need it, in order to comply with the requirement to immediately notify us of potential environmental impacts specified in paragraph A.4, A.5, and A.6 of NP Article II, as applicable, due to activities under the award (which includes subaward activities).

Section D. National policy requirements concerning live organisms. You must include provisions in each subaward to require the subrecipient's compliance with the national policy requirements concerning human subjects and animals that are specified in paragraphs A.1 and A.2 of NP Article III, as applicable.

Section E. Other national policy requirements. You must include provisions in each subaward to require the subrecipient's compliance with the national policy requirements in the following portions of NP Article IV of this award, as applicable:

1. Paragraph A.1.
2. Paragraphs A.3.a and b.
3. Paragraphs A.4 through A.17.

Appendix J to Part 1138—Terms and Conditions for SUB Article X, ''Subrecipient Monitoring and Other Post-Award Administration''

DoD Components must use the following standard wording in SUB Article X in accordance with § 1138.1005 of this part:

SUB Article X. Subrecipient Monitoring and Other Post-Award Administration. (December 2014)

Section A. General requirement for subrecipient monitoring. You must do the post-award monitoring of the subrecipient's activities under each subaward that is needed in order for you to ensure that:

1. The subrecipient carries out the portion of the substantive project or program under this award.

2. The subrecipient is using project funds under the subaward (including any cost sharing or matching the subrecipient provides that is counted as project funds in the approved budget of this award) for authorized purposes.

3. The subrecipient's performance under the subaward is in compliance with applicable Federal statutes and regulations, and the terms and conditions of your subaward.

Section B. Subrecipient monitoring actions.

1. *Required monitoring actions.* You must, as part of your post-award monitoring of each subrecipient:

a. Review the financial and programmatic information that your subaward terms and conditions require the subrecipient to provide, in accordance with Sections B and C of SUB Article VII of this award.

b. Follow up and ensure that the subrecipient takes timely and appropriate action to remedy deficiencies detected through any means, including audits and on-site reviews.

c. With respect to audits of subrecipients that are required under FMS Article V of this award:

i. Verify that the subrecipient is audited in accordance with those requirements, as applicable (note that Section F of SUB Article IV requires you to include those audit requirements for the subrecipient in the subaward's terms and conditions).

ii. Resolve and issue a management decision for audit findings that pertain to your subaward. Doing so is a requirement under either Section A or B of FMS Article V of this award (Section B requires that explicitly and Section A does so by implementing OMB guidance in 2 CFR 200.521, as well as other portions of subpart F of that part).

iii. Consider whether you need to adjust your own records related to this award based on results of audits, on-site reviews or other monitoring of the subrecipient and, as applicable, notify the award administration office.

2. *Other monitoring actions.* OMB guidance in 2 CFR 200.331(e)(1) through (3) describes other actions that may be useful as part of your subrecipient monitoring program, depending on the outcomes of the pre-award risk assessment you conducted in accordance with Section B of SUB Article II.

Section C. Remedies and subaward suspension or termination. With respect to any subaward under this award, you must:

1. Consider whether you need to take any remedial action if you determine that the subrecipient is noncompliant with an applicable Federal statute or regulation or the terms and conditions of your subaward, as described in Section D of SUB Article VIII.

2. Provide a notice of termination to the subrecipient if you terminate its subaward unilaterally for any reason prior to the end of the period of performance.

3. In the case of either suspension or termination of a subaward prior to the end of the period of performance, allow or disallow subaward costs in accordance with Section C of OAR Article III.

Section D. Subaward closeout.

1. You will close out each subaward when you either:

a. Determine that the subrecipient has completed its programmatic performance under the subaward and all applicable administrative actions; or

b. Terminate the subaward, if you do so prior to completion of the subrecipient's programmatic performance.

2. With respect to the closeout of each subaward:

a. You must pay the subrecipient promptly for allowable and reimbursable costs.

b. Consistent with the terms and conditions of the subaward, you must make a settlement for any upward or downward adjustments to the Federal share of costs after you receive the information you need from the subrecipient to close out the subaward.

c. You should complete the closeout of the subaward no later than one year after you receive and accept the final reports and other information from the subrecipient that you need to close out the subaward.

Appendix K to Part 1138—Terms and Conditions for SUB Article XI, ''Requirements Concerning Subrecipients' Lower-Tier Subawards''

DoD Components must use the following standard wording in SUB Article XI in accordance with § 1138.1105 of this part:

SUB Article XI. Requirements Concerning Subrecipients' Lower-Tier Subawards. (December 2014)

Section A. Purpose. This article specifies requirements you must include in any cost-type subaward under which you determine that the subrecipient of your subaward may make lower-tier cost-type subawards to other entities.

Section B. Requirements for lower-tier subawards. Your cost-type subaward terms and conditions must require your subrecipient, with respect to each lower-tier cost-type subaward that it makes, to:

1. Ensure that the lower-tier transaction is a subaward, rather than a procurement, by making the determination that SUB Article I of this award requires you to make for your subawards.

2. Conduct the pre-award risk assessment of its intended subrecipient that Section B of SUB Article II of this award requires you to make for your subawards.

3. Include in any cost-type subaward it makes at the next tier:

a. The informational content that SUB Article III specifies;

b. The administrative requirements that SUB Articles IV through VIII of this award specify;

c. The national policy requirements that SUB Article IX of this award specifies, as applicable; and

d. The requirements of this article if the next-tier subrecipient may make even lower-tier cost-type subawards to other entities.

4. Carry out the subrecipient monitoring and other post-award administration responsibilities specified in SUB Article X of this award.

Appendix L to Part 1138—Terms and Conditions for SUB Article XII, ''Fixed-Amount Subawards''

DoD Components must use the following standard wording in SUB Article XII in accordance with § 1138.1205 of this part:

SUB Article XII. Fixed-Amount Subawards. (December 2014)

Section A. Limitations on use.

1. You may not use a fixed-amount subaward:

a. If the total value over the life of the subaward will exceed the simplified acquisition threshold.

b. Unless the project or program scope is specific, with definite outcomes, and you are able to establish a reasonable estimate of the actual costs of accomplishing those outcomes.

c. If you will predetermine a set amount or percentage of cost sharing or matching that the subrecipient must provide under the subaward.

d. If the subrecipient will acquire any real property or equipment under the subaward.

2. For fixed-amount subawards not prohibited by paragraph 1 of this section and except as provided in Section B of this article, you must obtain our prior approval before making a fixed-amount type of subaward.

a. If Section B of FMS Article IV requires you to obtain our prior approval before you make any subaward, and you do not identify the subaward as a fixed-amount subaward when you obtain that approval, then you must subsequently request separate approval before awarding it as a fixed-amount type of subaward.

b. If a subaward is identified as a fixed-amount type of subaward in the budget you submit for our approval, then our approval of the budget is the required prior approval.

Section B. Fixed-amount subawards that do not require prior approval. You are not required to obtain our prior approval before using a fixed-amount type of subaward if:

1. The subaward is to either:

a. A foreign public entity; or

b. An organizational unit of a foreign organization, if that unit does not have a place of business in the United States, regardless of whether another organizational unit of that foreign organization has one.

2. You determine that the portion of the project or program under this award which the subrecipient will be carrying out under the subaward has one or more specific outcomes with the following characteristics:

a. You can define the outcomes well enough to specify them at the time you make the subaward. Note that:

i. Outcomes are distinct from inputs needed to achieve the outcomes, such as amounts or percentages of time that subrecipient employees or other participants will spend on the project or program.

ii. The inherently unpredictable nature of basic or applied research makes it rarely, if ever, possible to define specific research outcomes in advance, which makes fixed-amount subawards inappropriate for research. Note that technical performance reports serve to document research outcomes but are not themselves outcomes, notwithstanding the definition of ''performance goals'' in OMB guidance at 2 CFR 200.76.

b. The accomplishment of each outcome will be observable and verifiable by you when it occurs, so that you will not need to rely solely on the subrecipient's assurance of that accomplishment.

c. The subrecipient associates its projected costs with outcomes in the proposal it submits to you, and you are confident that the costs of accomplishment of the outcomes will equal or exceed the subaward amount. This requires either that you have a high degree of confidence:

i. In your estimate of the costs associated with accomplishing the well-defined and observable outcomes, based on the prospective subrecipient's proposal (and using the applicable cost principles in FMS Article III as a guide); or

ii. That those costs will be within a finite range, rather than a specific amount, so that you may provide an amount of funding under the subaward that does not exceed the lower end of the range, with the provision that the subrecipient agrees to provide any balance above that amount that ultimately is needed to accomplish the outcomes. Your subaward then would include a term or condition to reflect the subrecipient's agreement to provide that balance (which would be in an amount to be post-determined, when the outcomes are accomplished). Note that this is distinct from a situation in which you predetermine a set amount or percentage of cost sharing or matching that the subrecipient must provide under its subaward, a situation in which paragraph A.1.c of this article prohibits use of a fixed-amount subaward.

3. a. The subaward is based on a fixed rate per unit of outcome (or ''unit cost'') and you have both the confidence:

i. That is described in paragraph B.2.c of this article in the estimated costs associated with each unit of outcome; and

ii. In the subrecipient's guarantee that it can accomplish at least the number of units of outcome on which your total subaward amount will be based (*i.e.,* the product of the unit cost and the number of units of outcome the subrecipient guarantees to accomplish).

b. Note, however, that not every fixed rate subaward is also a fixed-amount subaward. If you have confidence in the unit cost but not also in the subrecipient's ability to guarantee the number of units of outcome that it will accomplish, then you should set a not-to-exceed award amount based on the number of units desired and reduce the subaward amount at the end if the subrecipient accomplishes fewer than that number. Examples of activities for which it may be appropriate to award this type of fixed rate subaward that is not a fixed-amount subaward include:

i. A clinical trial for which the unit cost is the cost of treating each participant. The not-to-exceed amount would be based on the number of participants the subrecipient planned to recruit and the final award on the number who actually participated, documentation for which would be subject to audit.

ii. Labor costs for performance of a portion of the project or program under this award by a firm that treats its indirect cost rate as proprietary information. The unit cost in that case may be ''loaded'' labor rates for the firm's employees that include indirect costs. The final award amount would depend on the number of labor hours the firm's employees expended under the subaward, documentation for which may be audited without exposing proprietary details associated with the actual costs.

Section C. Informational content of fixed-amount subawards. You must include in each fixed-amount subaward the informational content, other than the indirect cost rate, that is described in SUB Article III of this award.

Section D. Terms and conditions addressing administrative requirements.

1. *General.* This section:

a. Specifies the minimum set of terms and conditions (in lieu of the more extensive set specified in SUB Articles IV through X for cost-type subawards) addressing administrative requirements that you must include in each fixed-amount subaward:

i. To an entity other than a foreign organization, as applicable; and

ii. To the maximum extent practicable, to a foreign organization.

b. Does not preclude the inclusion of other requirements that you need in order to meet your responsibilities under this award for performance of the project or program and compliance with applicable administrative and national policy requirements.

2. *Financial and program management requirements.*

a. *Financial management system standards.* For a subaward to other than a for-profit entity, your subaward must require the subrecipient to include the information specified in paragraph B.1 of FMS Article I in its financial management system, for the purposes of the non-federal audits required by paragraph 2.d of this section.

b. *Payments.* Your payments must be based on accomplishment of the outcomes and associated costs that you used to establish the award amount, rather than on subrecipient expenditures for project or program purposes. Milestone payments before the end of the subaward's period of performance may be appropriate if there are outcomes that the subrecipient will accomplish at different times during that period.

c. *Revision of budget and program plans.* If our prior approval was required under paragraph A.2 of this article for use of a fixed-amount type of subaward, then you must:

i. Request our prior approval for any change in scope or objective of the subaward; and

ii. Therefore include a requirement in the subaward for the subrecipient to request that approval through you.

d. *Non-federal audits.* You must include the requirement for non-Federal audits described in Section F of SUB Article IV. The audits are intended to focus on compliance with the performance requirements in the subaward terms and conditions and not to review actual costs as they would for a cost-type subaward.

3. *Property requirements.*

a. *Federally owned property.* If the subrecipient will be accountable for federally owned property, you must include the property management system, use, and disposition requirements described in Sections C and F of SUB Article V that are applicable to federally owned property.

b. *Intangible property.* You must include the applicable intangible property requirements described in Section G of SUB Article V.

4. *Reporting requirements.* You must include requirements for reporting that you need in order to meet your responsibilities under this award for reporting to us.

5. *Other administrative requirements.*

a. *Integrity-related information.* You must include the substance of the provision in Section C of OAR Article I in any subaward you make under this award. The provision must require the subrecipient's disclosure of any evidence directly to the Inspector General, DoD.

b. *Records retention and access.*

i. You must include the requirements for records retention and access in paragraph A.3 and Sections B and F of OAR Article II, as applicable, if the subaward is to an institution of higher education, nonprofit organization, State, local government, or Indian tribe. You may not impose any other records retention or access requirements on the subrecipient.

ii. You must include the corresponding requirements of 32 CFR 34.42 if the subaward is to a for-profit entity.

c. *Remedies and termination.* You must include:

i. The requirements concerning remedies and termination that are described in paragraphs D.1 and 2 of SUB Article VIII;

ii. Provisions addressing any hearing and appeal rights the subrecipient has, as described in Section E of SUB Article VIII; and

iii. Terms and conditions addressing adjustment of the amount of the subaward if it is terminated before the subrecipient accomplishes all of the specified outcomes.

d. *Continuing responsibilities.* You must include requirements concerning continuing responsibilities for audits and records retention and access that are described in paragraphs B.1 and 3 of OAR Article VII.

e. *Collection of amounts due.* You should consider including requirements concerning collection of amounts due, as described in Section F of SUB Article VIII.

Section E. National policy requirements for fixed-amount subawards. You must include in the terms and conditions of each fixed-amount subaward the national policy requirements that SUB Article IX of this award specifies, as applicable.

Section F. Subrecipient monitoring and other post-award administration. You must carry out the subrecipient monitoring and post-award administration actions specified in SUB Article X, as applicable.

Section G. Fixed-amount subawards at lower tiers.

1. *Authority.*

a. If Section B of this article authorizes you to use a fixed-amount type of subaward without our prior approval in some situations, a cost-type subaward that you make may authorize the subrecipient to use fixed-amount subawards at the next lower tier in those same situations without our prior approval.

b. If you wish to allow a subrecipient of a cost-type subaward to use fixed-amount subawards at the next tier in other situations (*i.e.,* situations in which this article requires you to obtain our prior approval before using a fixed-amount type of subaward), your subaward terms and conditions must require the subrecipient to submit a request through you to obtain our prior approval for use of that type of subaward.

2. *Subaward requirements.* If your subrecipient is authorized to use lower-tier fixed-amount subawards, as described in paragraphs 1.a and b of this section, your subaward's terms and conditions must:

a. Require the subrecipient, before it makes any lower-tier fixed-amount subaward, to:

i. Ensure that the lower-tier transaction is a subaward, rather than a procurement, by making the determination that SUB Article I of this award requires you to make for your subawards.

ii. Conduct the pre-award risk assessment of its intended subrecipient that Section B of SUB Article II of this award requires you to make for your subawards.

b. Include the requirements specified in Sections A through F of this article.

Dated: October 19, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–25701 Filed 11–4–16; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 21, 22, 32, 33, 34, and 37

[DOD–2016–OS–0055]

RIN 0790–AJ50

DoD Grant and Agreement Regulations

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This notice of proposed rulemaking (NPRM) is the last in a sequence of six NPRM documents in this **Federal Register** that collectively establishes for DoD grants and cooperative agreements an updated interim implementation of Governmentwide guidance on administrative requirements, cost principles, and audit requirements for Federal awards and make other needed updates to the DoD Grant and Agreement Regulations (DoDGARs). This NPRM removes two existing DoDGARs parts and revises four others in order to conform them with the 11 parts of the DoDGARs proposed in the NPRMs preceding this one in this section of this **Federal Register**.

DATES: To ensure that they can be considered in developing the final rule, comments must be received at either the Web site or mailing address indicated below by February 6, 2017.

ADDRESSES: You may submit comments identified by docket number, or by Regulatory Information Number (RIN) and title, by either of the following methods:

The Web site: http://www.regulations.gov. Follow the instructions at that site for submitting comments.

Mail: Department of Defense, Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, ATTN: Box 24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from the public is to make the submissions available for public viewing on the Internet at *http://www.regulations.gov* without change (*i.e.,* as they are received, including any personal identifiers or contact information).

FOR FURTHER INFORMATION CONTACT: Wade Wargo, Basic Research Office, telephone 571–372–2941.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of the Regulatory Action

1. The Need for the Regulatory Action and how the Action Meets That Need

As explained in the Supplementary Information section of the first of the sequence of six NPRMs in this section of this **Federal Register**, these NPRMs collectively make a major portion of the updates to the Department of Defense Grant and Agreement Regulations (DoDGARs) that are needed in order to implement OMB guidance at 2 CFR part 200 and for other purposes. The first five NPRMs in the sequence propose eleven new DoDGARs parts located in chapter XI of title 2 of the Code of Federal Regulations (CFR), which will ultimately be the location in the CFR for all of the DoDGARs. This sixth and final NPRM in the sequence proposes conforming changes to the portion of the DoDGARs that will remain for an interim period in subchapter C of chapter I of title 32 of the CFR, which is where all of the DoDGARs were originally located. A second round of DoDGARs updates to be proposed for comment in the future will relocate the

content of the remaining portion of the DoDGARs from title 32 to title 2 of the CFR. The conforming changes proposed by this NPRM are essential to ensuring internal consistency within the DoDGARs during this interim period of transition.

2. Legal Authorities for the Regulatory Action

There are two statutory authorities for this NPRM:

- 10 U.S.C. 113, which establishes the Secretary of Defense as the head of the Department of Defense; and
- 5 U.S.C. 301, which authorizes the head of an Executive department to prescribe regulations for the governance of that department and the performance of its business.

B. Summary of the Major Provisions of the Regulatory Action

This NPRM proposes to remove two of the eight DoDGARs parts currently located in subchapter C of chapter I of 32 CFR, revise four parts in that subchapter, and make no changes to the other two parts. Specifically, it:

- Removes existing DoDGARs parts 32 and 33 (32 CFR parts 32 and 33). Section I.B.1 of this Supplementary Information section provides further information about the proposed removal of parts 32 and 33.
- Revises existing DoDGARs parts 21, 22, 34, and 37 (32 CFR parts 21, 22, 34, and 37). Section I.B.2 of this Supplementary Information section describes some of the more significant revisions to those four parts that: (1) Update outdated references; and (2) eliminate internal inconsistencies between the portion of the DoDGARs that will remain in 32 CFR for an interim period and the new DoDGARs parts in chapter XI of 2 CFR that are proposed in the five NPRMs preceding this one in this **Federal Register**.
- Makes no revisions to existing DoDGARs parts 26 and 28 (32 CFR parts 26 and 28). Part 26 is the part in which DoD adopted a Governmentwide common rule on drug-free workplace requirements for financial assistance awards. Part 28 is the part in which it adopted the Governmentwide common rule implementing statutory restrictions on lobbying. There are no changes needed in either of these parts in order to conform them with the DoDGARs parts proposed in the other NPRMs in this section of this **Federal Register**. The drug-free workplace requirements and lobbying restrictions in these parts ultimately will be relocated from 32 CFR to chapter XI of 2 CFR.

1. Removal of DoDGARs Parts 32 and 33

Part 32 of the DoDGARs (32 CFR part 32) is the CFR part in which DoD implemented OMB Circular A–110, which governed the administrative requirements for grant and cooperative agreement awards to institutions of higher education, hospitals, and other nonprofit organizations. Part 33 is the part in which DoD adopted the Governmentwide common rule implementing OMB Circular A–102, which governed the administrative requirements for grant and cooperative agreement awards to States, local governments, and Indian tribal governments. Both Circulars A–110 and A–102 were superseded by Governmentwide guidance for grants and cooperative agreements that OMB issued at 2 CFR part 200, ''Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.'' DoD therefore issued an interim final rule, pending updates to the DoDGARs to implement that OMB guidance, on December 19, 2014, at 2 CFR part 1103, to: (1) Direct DoD Components to conform requirements for recipients in their award terms and conditions with those in 2 CFR part 200,; and (2) grant a deviation from the administrative requirements in DoDGARs parts 32 and 33. The third and fourth of the six NPRMs in this section of today's **Federal Register** propose new DoDGARs parts that take the next major step in the interim implementation of the OMB guidance. They do so by establishing standard wording of general terms and conditions for awards to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes, including terms and conditions addressing administrative requirements. This NPRM's proposed removal of DoDGARs parts 32 and 33 from title 32 of the CFR precludes any apparent conflict between the administrative requirements in parts 32 and 33 and the administrative requirements in the proposed new DoDGARs parts addressing general terms and conditions.

2. Revisions to DoDGARs Parts 21, 22, 34, and 37

Since the proposed new parts of the DoDGARs to be created in 2 CFR chapter XI supersedes parts 32 and 33 of 32 CFR, various references to parts 32 and 33 found in the remaining parts 21, 22, 34, and 37 of 32 CFR must be updated to their new locations in 2 CFR chapter XI. Related changes are necessary to eliminate other internal inconsistencies between parts 21, 22, 34, and 37 and the new proposed parts of the DoDGARs in Chapter XI that implement 2 CFR part 200. The following are examples of these latter types of changes:

- Replacing references to the superseded OMB Circulars A–21, A–87, A–89, A–102, A–110, A–122, and A–133 with the new locations in 2 CFR part 200.
- Removing Appendix B to 32 CFR part 22 that provided suggested award provisions for national policy requirements that often apply as they are superseded by the requirements in the proposed 2 CFR part 1122.
- Removing appendix C to 32 CFR part 22 that discussed administrative requirements and issues to be addressed in award terms and conditions as they are superseded by the requirements in the proposed parts in Subchapter D of 2 CFR chapter XI.
- Removing 32 CFR 22.610 that covered requirements for the content of awards as those requirements are superseded by 2 CFR part 1120.

The amendatory language in this notice updates other references and language in these remaining parts that are not related to the deletion of parts 32 and 33 or generally to the implementation of the guidance at 2 CFR part 200. Some of these changes are necessary mainly to conform these four remaining parts of the DoDGARs in 32 CFR to statutes, regulations, or policy that were issued, revised, or repealed subsequent to the last revision of those parts. The following are examples of such changes:

- Removing references to the separate internal DoD document for the DoDGARs issued under DoD 3210.6–R. Previously, the DoD published the DoDGARs in both the CFR and a separate internal DoD document. The separate internal document was cancelled by the February 6, 2014 update to DoD Directive 3210.06. This directive establishes policy and assigns responsibilities for the Defense Grant and Agreement Regulatory System (DGARS) and, as a part of this system, provides for DoD Components' use of the policies and procedures in the DoDGARs.
- Replacing the outdated references to Director of Defense Research and Engineering (DDR&E) with Assistant Secretary of Defense for Research and Engineering (ASD(R&E)).
- Replacing references to the Excluded Parties List System (EPLS) with the System for Award Management (SAM).
- Replacing the references to the Director of Information, Operations and Reports, Washington Headquarters

Services (DIOR, WHS), which was the entity previously responsible for reporting Catalog of Federal Domestic Assistance (CFDA) program information to OMB and GSA and for operating the Defense Assistance Awards Data System (DAADS), with the DAADS Administrator, which is a function that is now part of the Defense Manpower Data Center.

• Revising the requirements related to when DoD Components must report obligating actions to DAADS from quarterly reporting to reporting each individual obligating action within 15 days after action execution. This change is necessary to allow sufficient time for the DAADS System Administrator to comply with Federal Funding Accountability and Transparency Act reporting requirements.

• Because they generally derive from the same source requirements, revising the contract provisions in appendix A to part 34, which applies to for-profit organizations, to align with the contract provisions for national policy requirements proposed in 2 CFR part 1132, which applies to States, local governments, Indian tribes, institutions of higher education, and nonprofit organizations. The amended appendix A to part 34 includes 10 of the 11 national policy requirements proposed in 2 CFR part 1132. In addition to several revisions to the national policy requirements previously included in this appendix to part 34, there are also three additional national policy requirements proposed for inclusion in this appendix that are commonly applicable to certain types of contracts issued by for-profit recipients.

• Since appendix B to 32 CFR part 22 is proposed for removal under this NPRM, incorporating language in appendices D and E to part 37 related to national policy requirements for Technology Investment Agreements (TIAs) that was previously only incorporated into part 37 by reference to appendix B of 32 CFR part 22. Other changes to appendices D and E to part 37 include: (1) Incorporating language that generally requires DoD Components to use the standard wording found in 2 CFR part 1122 for the terms and conditions of those national policy requirements that are applicable to TIAs; (2) updating the description of the scope of the equal employment opportunity requirements (41 CFR chapter 60) referenced in Section C of appendix D; (3) incorporating language into Section C of appendix D related to the National Environmental Policy Act and other environmental requirements by referencing appendix B of the proposed 2 CFR part 1122; (4) incorporating an additional national policy requirement (Archaeological and Historic Preservation Act of 1974) in Section C of appendix D that applies in certain circumstances; and (5) also incorporating the three national policy requirements added to appendix A of part 34 in Section C of appendix E.

• Removing from various locations in 32 CFR part 37 a requirement in 10 U.S.C. 2371 that is no longer in effect to report annually to Congress information on cooperative agreements or transactions other than contracts, cooperative agreements, and grants that employ certain provisions of 10 U.S.C. 2371.

C. Costs and Benefits

The primary benefit of the regulatory action proposed in this NPRM results from allowing DoD to more quickly implement the portions of OMB's Governmentwide guidance on uniform administrative requirements, cost principles, and audit requirements that have an impact on its grant and cooperative agreement terms and conditions. If DoD were to wait until all parts of the DoDGARs affected by OMB's uniform guidance were revised before proposing them for public comment, it would delay the implementation of the portion of OMB's uniform guidance most directly affecting States, local governments, Indian tribes, institutions of higher education, and nonprofit organizations.

Therefore, this NPRM proposes conforming changes, updating of references, and other minor changes and technical corrections in four of the existing parts of DoDGARs in title 32 until all remaining parts can be fully implemented in 2 CFR chapter XI at a later date. Thus, the administrative burdens and associated costs to recipients due to the regulatory action proposed in this NPRM are essentially the same as those resulting from the Governmentwide guidance to agencies contained in 2 CFR part 200. However, two of the proposed changes in this NPRM, not directly related to the implementation of 2 CFR part 200, provide notable benefits and reductions in costs to recipients.

The first of those two changes relates to the audit requirements for grants and agreements with for-profit organizations, which are found in 32 CFR part 34. Although this part is not subject to the guidance in 2 CFR part 200, it was modeled on administrative requirements for grants and agreements with institutions of higher education, hospitals, and other non-profit organizations found in the superseded OMB Circular A–110. This NPRM proposes an increase to the dollar threshold at which for-profit organizations are required to receive an annual audit. Currently, 32 CFR 34.16 requires for-profit organizations to have an independent auditor perform an audit in a year in which it expends $500,000 or more under Federal awards. This regulatory action proposes to increase that threshold from $500,000 to $750,000 to parallel the threshold for States, local governments, Indian tribes, institutions of higher education, and nonprofit organizations located in 2 CFR 200.501. This threshold increase is expected to reduce administrative burden to for-profit organizations, as well as to decrease the associated costs to those organizations and to the Government.

The other of those two proposed changes relates to the part of the DoDGARs dealing with TIAs, 32 CFR part 37. This change benefits DoD Components and reduces costs by removing from this regulation a requirement in 10 U.S.C. 2371 that is no longer in effect to report annually to Congress information on cooperative agreements or transactions other than contracts, cooperative agreements, and grants that employ certain provisions of 10 U.S.C. 2371. Public Law 113–291 removed this annual reporting requirement from 10 U.S.C. 2371.

II. Regulatory Analysis

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

Executive Order 12866, as supplemented by Executive Order 13563, directs each Federal agency to: Propose regulations only after determining that benefits justify costs; tailor regulations to minimize burdens on society, consistent with achieving regulatory objectives; maximize net benefits when selecting among regulatory approaches; to the extent feasible, specify performance objectives rather than the behavior or manner of compliance; and seek the views of those likely to be affected before issuing a notice of proposed rulemaking, where feasible and appropriate. The Department of Defense has determined that this regulatory implementation, which includes proposed changes that largely conform existing parts of the DoDGARs to the new proposed parts implementing 2 CFR part 200, will maximize long-term benefits in relation to costs and burdens for recipients of those awards in the same fashion as those resulting from that Governmentwide guidance to agencies.

This rule has been designated a ''significant regulatory action'' under section 3(f) of Executive Order 12866, although not an economically significant one. Accordingly, the rule has been reviewed by OMB.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) (2 U.S.C. 1532) requires that a Federal agency prepare a budgetary impact statement before issuing a rule that includes any Federal mandate that may result in the expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in 1995 dollars, updated annually for inflation. In 2015, that inflation-adjusted amount in current dollars is approximately $146 million. The Department of Defense has determined that this proposed regulatory action will not result in expenditures by State, local, and tribal governments, or by the private sector, of that amount or more in any one year.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires an agency that is proposing a rule to provide a regulatory flexibility analysis or to certify that the rule will not have a significant economic impact on a substantial number of small entities. The Department of Defense certifies that this proposed regulatory action will not have a significant economic impact on substantial number of small entities beyond any impact due to provisions of it that implement OMB guidance at 2 CFR part 200.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35; 5 CFR part 1320, appendix A.1) (PRA), the Department of Defense has determined that there are no new collections of information contained in this proposed regulatory action.

Executive Order 13132, ''Federalism''

Executive Order 13132 establishes certain requirements that an agency must meet when it proposes a regulation that has Federalism implications. This proposed regulatory action does not have any Federalism implications.

List of Subjects in 32 CFR Parts 21, 22, 32, 33, 34, and 37

Business and Industry, Colleges and universities, Cooperative agreements, Grants administration, Hospitals, Indians, Nonprofit organizations, Small business, State and local governments.

Accordingly, under the authority of 5 U.S.C. 301 and 10 U.S.C. 113, 32 CFR chapter I, subchapter C is proposed to be amended as follows:

PART 21—[AMENDED]

■ 1. The authority citation for part 21 continues to read as follows:

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

§ 21.215 [Amended]

■ 2. Section 21.215 is amended by removing ''Director of Defense Research and Engineering'' and adding ''Assistant Secretary of Defense for Research and Engineering (ASD(R&E))'' in its place.

■ 3. Section 21.220 is revised to read as follows:

§ 21.220 What publications are in the DGARS?

The DoD Grant and Agreement Regulations comprise the principal element of the DGARS. The ASD(R&E) also may publish DGARS policies and procedures in DoD instructions and other DoD publications, as appropriate.

■ 4. Section 21.300 is amended by:

■ a. In paragraph (a), removing ''subpart D'' and adding ''subpart F'' in its place; and

■ c. Revising paragraph (b).

The revision reads as follows:

§ 21.300 What instruments are subject to the DoD Grant and Agreement Regulations (DoDGARs)?

* * * * *

(b) Note that each portion of the DoDGARs identifies the types of instruments to which it applies.

* * * * *

§ 21.320 [Amended]

■ 5. Section 21.320 is amended by removing paragraph (d).

■ 6. Revise § 21.330 to read as follows:

§ 21.330 How are the DoDGARs published and maintained?

(a) The DoD publishes the DoDGARs in the Code of Federal Regulations (CFR).

(b) The location of the DoDGARs in the CFR currently is in transition. The regulations are moving from chapter I, subchapter C, title 32, to a new location in chapter XI, title 2 of the CFR. During the transition, there will be some parts of the DoDGARs in each of the two titles.

(c) The DoD publishes updates to the DoDGARs in the **Federal Register** for public comment.

(d) A standing working group recommends revisions to the DoDGARs to the ASD(R&E). The ASD(R&E), Director of Defense Procurement, and each Military Department must be represented on the working group. Other DoD Components that make or administer awards may also nominate representatives. The working group meets when necessary.

■ 7. Section 21.335 is amended by revising paragraph (b) to read as follows:

§ 21.335 Who can authorize deviations from the DoDGARs?

* * * * *

(b) The ASD(R&E) or his or her designee must approve in advance any deviation for a class of awards. Note that, as described at 2 CFR 1126.3, OMB concurrence also is required for some class deviations from requirements included in awards to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes.

■ 8. Section 21.340 is amended by revising paragraph (a) to read as follows:

§ 21.340 What are the procedures for requesting and documenting deviations?

(a) DoD Components must submit copies of justifications and agency approvals for individual deviations and written requests for class deviations to: Principal Deputy Assistant Secretary of Defense for Research and Engineering, ATTN: Basic Research, 3030 Defense Pentagon, Washington, DC 20301–3030.

* * * * *

§ 21.505 [Amended]

■ 9. Section 21.505 is amended by removing ''domestic assistance programs'' and adding ''assistance programs'' in its place.

§ 21.510 [Amended]

■ 10. Section 21.510 is amended by:

■ a. Removing ''OMB Circular A–89'' and adding ''OMB guidance at 2 CFR 200.202'' in its place;

■ b. Removing ''domestic assistance programs'' and adding ''assistance programs'' in its place;

■ c. Removing ''and maintaining the Federal Assistance Programs Retrieval System, a computerized data base of the information''; and

■ d. Removing footnote 4.

■ 11. Section 21.515 is revised to read as follows:

§ 21.515 Who reports the information for the CFDA?

(a) Each DoD Component that provides financial assistance must:

(1) Report to the Defense Assistance Awards Data System (DAADS) Administrator all new programs and changes as they occur or as the DoD Component submits its annual updates to existing CFDA information. DAADS is further described in §§ 21.520 through 21.555.

(2) Identify to the DAADS Administrator a point-of-contact who will be responsible for reporting the program information and for responding to inquiries related to it.

(b) The DAADS Administrator is the Department of Defense's single liaison with whom DoD Components that collect and compile such program information work to report the information to the OMB and GSA.

■ 12. Section 21.520 is amended by revising paragraph (b) to read as follows:

§ 21.520 What are the purposes of the Defense Assistance Awards Data System (DAADS)?

* * * * *

(b) A basis for meeting Governmentwide requirements to report to *USASpending.gov* (or any successor site designated by OMB) and for preparing other recurring and special reports to the President, the Congress, the Government Accountability Office, and the public.

* * * * *

§ 21.525 [Amended]

■ 13. Section 21.525 is amended by removing ''Deputy Director, Defense Research and Engineering (DDDR&E)'' and adding ''Principal Deputy Assistant Secretary of Defense for Research and Engineering (PDASD(R&E))'' in its place.

■ 14. Section 21.530 is revised to read as follows:

§ 21.530 Who operates the DAADS?

(a) The Defense Manpower Data Center operates and maintains the DAADS for the ASD(R&E).

(b) The DAADS Administrator, consistent with guidance issued by the PDASD(R&E):

(1) Processes DAADS information twice a month and prepares recurring and special reports using such information.

(2) Prepares, updates, and disseminates instructions for reporting information to the DAADS. The instructions are to specify procedures, formats, and editing processes to be used by DoD Components, including record layout, submission deadlines, media, methods of submission, and error correction schedules.

§ 21.535 [Amended]

■ 15. Section 21.535 is amended in paragraph (d) by removing ''to the DIOR, WHS, at the address given in § 21.555(a). DIOR, WHS serves as the central point'' and adding ''to the DAADS administrator. The DAADS Administrator serves as the central point'' in its place.

■ 16. Section 21.540 is amended by revising paragraphs (b) and (c) to read as follows:

§ 21.540 What are the duties of the DoD Components' central points for the DAADS?

* * * * *

(b) Collect information required by the DAADS User Guide from those contracting activities, and report it to the DAADS Administrator, in accordance with §§ 21.545 through 21.555. Note that the DAADS User Guide, which a registered DAADS user may find at the Resources section of the DAADS Web site (*https://www.dmdc.osd.mil/daads/*), provides further information about required data elements and instructions for submitting data.

(c) Submit to the DAADS Administrator any recommended changes to the DAADS.

■ 17. Section 21.555 is revised to read as follows:

§ 21.555 When and how must DoD Components report to the DAADS?

DoD Components must report:

(a) Each obligating or deobligating action no later than 15 days after the date of the obligation or deobligation. Doing so enables DAADS to comply with the deadline in the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282; 31 U.S.C. 6101 note) to report to the Governmentwide data system (*USASpending.gov*) established to implement requirements of that Act.

(b) Using a method and in a format permitted either by the DAADS User Guide described in § 21.540(b) or by agreement with the DAADS Administrator.

§ 21.565 [Amended]

■ 18. Section 21.565 is amended by:

■ a. Redesignating footnote number 6 as footnote number 2; and

■ b. Removing ''Director for Basic Sciences, ODDR&E'' and adding ''Director for Basic Research, OASD(R&E)'' in its place.

■ 19. Appendix A is revised to read as follows:

Appendix A to Part 21—Instruments To Which DoDGARs Portions Apply

I. For each DoDGARs part that DoD already has adopted in chapter XI of title 2 of the Code of Federal Regulations (CFR), the following table summarizes the general subject area that the part addresses and its applicability. All of the DoDGARs ultimately will be located in chapter XI of 2 CFR.

DoDGARs . . .	which addresses . . .	applies to . . .
Part 1104	DoD's interim implementation of the OMB guidance in 2 CFR part 200.	grants and cooperative agreements other than TIAs.
Part 1108 (2 CFR part 1108)	Definitions of terms	terms used throughout the DoDGARs in chapter XI of 2 CFR other than the portion containing regulations implementing specific national policy requirements that provide their own definitions of terms.
Part 1120 (2 CFR part 1120)	Award format	grants and cooperative agreements, other than TIAs.
Part 1122 (2 CFR part 1122)	National policy requirements general award terms and conditions.	grants and cooperative agreements other than TIAs. Portions of this part apply to TIAs, but only as 32 CFR part 37 refers to them and makes them apply.
Part 1125 (2 CFR part 1125)	Governmentwide debarment and suspension requirements.	nonprocurement generally, including grants, cooperative agreements, TIAs, and any other instruments that are ''covered transactions'' under OMB guidance in 2 CFR 180.210 and 180.215, as implemented by 2 CFR part 1125, except acquisition transactions to carry out prototype projects (*see* 2 CFR 1125.20).
Parts 1126, 1128, 1130, 1132, 1134, 1136, and 1138 (subchapter D of 2 CFR chapter XI).	Administrative Requirements Terms and Conditions for Cost-type Awards to Nonprofit and Governmental Entities.	cost-type grants and cooperative agreements other than TIAs. Portions of this subchapter apply to TIAs, but only as 32 CFR part 37 refers to them and makes them apply.

II. For each DoDGARs part that will remain in subchapter C of chapter I of title 32 of the CFR, pending completion of the DoDGARs updating needed to fully implement OMB guidance in 2 CFR part 200 and for other purposes, the following table summarizes the general subject area that the part addresses and its applicability. All of the substantive content of these DoDGARs parts ultimately will be located in new parts in chapter XI of 2 CFR.

DoDGARs . . .	which addresses . . .	applies to . . .
Part 21 (32 CFR part 21), all but subparts D and E.	The Defense Grant and Agreement Regulatory System and the DoD Grant and Agreement Regulations.	''awards,'' which are grants, cooperative agreements, technology investment agreements (TIAs), and other nonprocurement instruments subject to one or more parts of the DoDGARs.
Part 21 (32 CFR part 21), subpart D.	Authorities and responsibilities for assistance award and administration.	grants, cooperative agreements, and TIAs.
Part 21 (32 CFR part 21), subpart E.	DoD Components' information reporting requirements.	grants, cooperative agreements, TIAs, and other nonprocurement instruments subject to reporting requirements in 31 U.S.C. chapter 61.
Part 22 (32 CFR part 22)	DoD grants officers' responsibilities for award and administration of grants and cooperative agreements.	grants and cooperative agreements other than TIAs. Portions of this part apply to TIAs, but only as 32 CFR part 37 refers to them and makes them apply.
Part 26 (32 CFR part 26)	Governmentwide drug-free workplace requirements.	grants, cooperative agreements and other financial assistance instruments, including TIAs, that are included in the definition of ''award'' at 32 CFR 26.605.
Part 28 (32 CFR part 28)	Governmentwide restrictions on lobbying	grants, cooperative agreements and other financial assistance instruments, including TIAs, that are included in the definitions of ''Federal grant'' and ''Federal cooperative agreement'' at 32 CFR 28.105.
Part 34 (32 CFR part 34)	Administrative requirements for grants and agreements with for-profit organizations.	grants and cooperative agreements other than TIAs (''award,'' as defined in 32 CFR 34.2). Portions of this part apply to TIAs, but only as 32 CFR part 37 refers to them and makes them apply.
Part 37 (32 CFR part 37)	Agreements officers' responsibilities for award and administration of TIAs.	TIAs. Note that this part refers to other portions of DoDGARs that apply to TIAs.

PART 22—[Amended]

■ 20. The authority citation for part 22 continues to read as follows:

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

■ 21. Section 22.100 is revised to read as follows:

§ 22.100 Purpose.

This part outlines grants officers' and DoD Components' responsibilities related to the award and administration of grants and cooperative agreements.

§ 22.220 [Amended]

■ 22. Section 22.220 is amended by:

■ a. In paragraph (a)(2), removing ''Director of Defense Research and Engineering (DDR&E)'' and adding ''Assistant Secretary of Defense for Research and Engineering (ASD(R&E))'' in its place; and

■ b. In paragraph (b), removing ''DDR&E'' everywhere it appears and adding ''ASD(R&E)'' in its place.

§ 22.310 [Amended]

■ 23. Section 22.310 is amended in paragraph (b)(1)(iii) by removing ''Deputy Director, Defense Research and Engineering'' and adding ''Principal Deputy Assistant Secretary of Defense for Research and Engineering'' in its place.

§ 22.315 [Amended]

■ 24. Section 22.315 is amended in paragraph (a)(3) by removing ''*http://www.FedGrants.gov*'' and adding ''*http://www.Grants.gov*'' in its place.

§ 22.325 [Removed]

■ 25. Section 22.325 is removed.

§ 22.405 [Amended]

■ 26. Section 22.405 is amended in paragraph (b) by removing ''32 CFR 32.14, 33.12, or 34.4'' and adding ''32 CFR 34.4 for awards to for-profit organizations or as described in OMB guidance at 2 CFR 200.207 for awards to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes'' in its place.

■ 27. Section 22.420 is amended by revising paragraphs (b)(1), (c)(1) introductory text, and (c)(1)(ii) to read as follows:

§ 22.420 Pre-award procedures.

* * * * *

(b) * * *

(1) Should the grants officer in a particular case decide that a pre-award credit report, audit, or survey is needed, he or she should consult first with the appropriate grants administration office (identified in § 22.710), and decide whether pre-existing surveys or audits of the recipient, such as those of the recipient's internal control systems under OMB guidance in subpart F of 2 CFR part 200, will satisfy the need (see § 22.715(a)(1)).

* * * * *

(c) * * *

(1) Is not identified in the Exclusions area of the System for Award Management (SAM Exclusions) as being debarred, suspended, or otherwise ineligible to receive the award (SAM is at *www.sam.gov*). In addition to being a requirement for every new award, note that checking SAM Exclusions also is a requirement for subsequent obligations of additional funds, such as incremental funding actions, in the case of pre-existing awards to institutions of higher education, as described at § 22.520(e)(5). The grants officer's responsibilities include (see the OMB guidance at 2 CFR 180.425 and 180.430, as implemented by the Department of Defense at 2 CFR 1125.425) checking SAM Exclusions for:

* * * * *

(ii) A recipient's principals (as defined in OMB guidance at 2 CFR 180.995, implemented by the Department of Defense in 2 CFR part 1125), potential recipients of subawards, and principals of those potential subaward recipients, if DoD Component approval of those principals or lower-tier recipients is required under the terms of the award.

* * * * *

■ 28. Section 22.505 is revised to read as follows:

§ 22.505 Purpose.

The purpose of this subpart is to supplement other regulations that

implement national policy requirements, to the extent that it is necessary to provide additional guidance to DoD grants officers.

■ 29. Section 22.510 is amended by revising paragraph (b) to read as follows:

§ 22.510 Certifications, representations, and assurances.

* * * * *

(b) *Representations and assurances.* Many national policies, either in statute or in regulation, require recipients of grants and cooperative agreements to make representations or provide assurances (rather than certifications) that they are in compliance with the policies. Part 1122 of the DoDGARs (2 CFR part 1122) provides standard wording of general award terms and conditions to address several of the more commonly applicable national policy requirements. These terms and conditions may be used to obtain required assurances and representations for national policy matters covered in part 1122 at the time of award, which is as effective and more efficient and less administratively burdensome than obtaining them at the time of each proposal. If any other assurances or representations must be obtained at the time of proposal, grants officers should use the most efficient method for doing so—*e.g.,* for a program that has a program announcement and applications using the standard application form (SF–424 [5]), the program announcement should include the texts of the required assurances and representations and clearly state that the applicant's electronic signature of the SF–424 will serve to affirm its agreement with each representation or assurance.

[5] For copies of Standard Forms listed in this part, contact regional grants administration offices of the Office of Naval Research. Addresses for the offices are listed in the ''Federal Directory of Contract Administration Services (CAS) Components,'' which may be accessed through the Defense Contract Management Agency homepage at: *http://www.dcma.mil.*

■ 30. Section 22.520 is amended by:

■ a. In paragraph (d)(2):

■ i. Removing ''Director of Defense Research and Engineering'' and adding ''Assistant Secretary of Defense for Research and Engineering'' in its place.

■ ii. Removing ''Director for Basic Sciences, ODUSD(LABS)'' and adding ''Director for Basic Research, OASD(R&E)'' in its place.

■ b. Revising paragraph (e)(1).

■ c. In paragraph (e)(5) introductory text, removing ''on the EPLS'' and adding ''in SAM Exclusions'' in its place.

■ d. In paragraph (e)(5)(i):

■ i. Removing ''check the EPLS'' and adding ''check SAM Exclusions'' in its place.

■ ii. Removing ''an institution's EPLS listing'' and adding ''an institution's SAM Exclusions listing'' in its place.

■ e. In paragraph (e)(5)(iii)(A), removing ''removed from the EPLS'' and adding ''removed from SAM Exclusions'' in its place.

The revision reads as follows:

§ 22.520 Campus access for military recruiting and Reserve Officer Training Corps (ROTC).

* * * * *

(e) *Grants officers' responsibility.* (1) A grants officer shall not award any grant or cooperative agreement to an institution of higher education that has been identified pursuant to the procedures of 32 CFR part 216. Such institutions are identified as being ineligible in the Exclusions area of the System for Award Management (SAM Exclusions). The exclusion types in SAM Exclusions broadly indicate the nature of an institution's ineligibility, as well as the effect of the exclusion, and the Additional Comments field may have further details about the exclusion. Note that OMB guidance in 2 CFR 180.425 and 180.430, as implemented by the Department of Defense at 2 CFR part 1125, require a grants officer to check the SAM Exclusions prior to determining that a recipient is qualified to receive an award.

* * * * *

■ 31. Section 22.605 is amended by:

■ a. Revising the introductory text and paragraphs (a) and (b).

■ b. In paragraph (c)(2), redesignating footnote number 9 as footnote number 6 and revising newly redesignated footnote 6.

The revisions read as follows:

§ 22.605 Grants officers' responsibilities.

At the time of award, the grants officer is responsible for ensuring that:

(a) The award:

(1) Conforms to the award format specified in 2 CFR part 1120.

(2) Includes appropriate general terms and conditions and any program-specific and award-specific terms and conditions needed to specify applicable administrative, national policy, and programmatic requirements. These requirements include:

(i) Federal statutes or Executive orders that apply broadly to Federal or DoD grants and cooperative agreements; and

(ii) Any requirements specific to the program, as prescribed in the program statute (see § 22.210(a)(2)), or specific to the funding, as stated in pertinent Congressional appropriations (see § 22.515).

(b) Information about the award is reported to the Defense Assistance Award Data System (DAADS), in accordance with Subpart E of 32 CFR part 21.

(c) * * *

(2) * * *

[6] See footnote 5 to § 22.510(b).

§ 22.610 [Removed]

■ 32. Section 22.610 is removed.

§ 22.700 [Amended]

■ 33. Section 22.700 is amended by removing ''32 CFR parts 32, 33, and 34'' and adding ''32 CFR part 34 and subchapter D of 2 CFR chapter XI'' in its place.

■ 34. Section 22.710 is amended by:

■ a. In the introductory text, redesignating footnote number 10 as footnote number 7 and revising newly redesignated footnote 7;

■ b. In paragraph (a)(1):

■ i. Removing ''the university cost principles in OMB Circular A–21'' and adding ''the cost principles in subpart E of 2 CFR part 200'' in its place;

■ ii. Removing footnote 11;

■ c. In paragraph (a)(2):

■ i. Removing ''OMB Circular A–122'' and adding ''subpart E of 2 CFR part 200'' in its place;

■ ii. Removing footnote 12;

■ d. In paragraph (b) introductory text, removing ''Defense Contract Management Command'' and adding ''Defense Contract Management Agency'' in its place;

■ e. In paragraph (b)(2), removing ''Attachment C of OMB Circular A–122'' and adding ''appendix VIII to 2 CFR part 200'' in its place; and

■ f. In paragraph (b)(3), removing ''OMB Circular A–122'' and adding ''subpart E of 2 CFR part 200'' in its place.

The revision reads as follows:

§ 22.710 Assignment of grants administration offices.

* * * * *

[7] The ''Federal Directory of Contract Administration Services (CAS) Components'' may be accessed through the Defense Contract Management Agency homepage at *http://www.dcma.mil.*

* * * * *

■ 35. Section 22.715 is amended by:

■ a. In paragraph (a)(1) and paragraph (a)(3) introductory text, removing ''OMB Circular A–133'' and adding ''subpart F of 2 CFR part 200'' in its place.

■ b. In paragraph (a)(3)(iii):

■ i. Removing ''OMB Circular A–133, as implemented at 32 CFR 32.26 and 33.26'' and adding ''subpart F of 2 CFR part 200, as implemented at subpart E of 2 CFR part 1128'' in its place.

■ ii. Removing ''400 Army-Navy Drive, Arlington, VA 22202'' and adding ''4800 Mark Center Drive, Alexandria, VA 22350–1500'' in its place.
■ c. In paragraph (a)(4):
■ i. Removing ''DoD Directive 7640.2'' and adding ''DoD Instruction 7640.02'' in its place.
■ ii. Removing ''DoD Directive 7600.10'' and adding ''DoD Instruction 7600.10'' in its place.
■ iii. Redesignating footnote numbers 13 and 14 as footnote numbers 8 and 9, respectively, and revising newly redesignated footnote 9.

§ 22.715 Grants administration office functions.

* * * * *

(a) * * *

(4) * * *

[9] See footnote 8 to this section.

* * * * *

■ 36. Section 22.805 is amended by revising the introductory text and paragraph (a) to read as follows:

§ 22.805 Post-award requirements in other parts.

Grants officers responsible for post-award administration of grants and cooperative agreements shall administer such awards in accordance with the following parts of the DoDGARs, as supplemented by this subpart:

(a) *Awards to domestic recipients.* Standard administrative requirements for grants and cooperative agreements with domestic recipients are specified in other parts of the DoDGARs, as follows:

(1) For awards to domestic institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes, requirements are specified in subchapter D of 2 CFR chapter XI.

(2) For awards to domestic for-profit organizations, requirements are specified in 32 CFR part 34.

* * * * *

■ 37. Section 22.810 is amended by:
■ a. Revising paragraphs (b)(1) and (2).
■ b. Removing and reserving paragraph (c)(1).
■ c. In paragraph (c)(3)(i), redesignating footnote number 15 as footnote number 10 and revising newly redesignated footnote 10.
■ d. In paragraph (c)(3)(iii), removing ''ensure that the recipients' Taxpayer Identification Number (TIN)'' and adding ''ensure that, for recipients not required to register in the System for Award Management, the recipients' Taxpayer Identification Number (TIN)'' in its place.

The revisions read as follows:

§ 22.810 Payments.

* * * * *

(b) *Policy.* (1) It is Governmentwide policy to minimize the time elapsing between any payment of funds to a recipient and the recipient's disbursement of the funds for program purposes.

(2) It also is a Governmentwide requirement to use electronic funds transfer (EFT) in the payment of any grant unless the recipient has obtained a waiver in accordance with Department of the Treasury regulations at 31 CFR part 208. As a matter of DoD policy, this requirement applies to cooperative agreements, as well as grants. Within the Department of Defense, the Defense Finance and Accounting Service implements this EFT requirement, and grants officers have collateral responsibilities at the time of award, as described in § 22.605(c), and in postaward administration, as described in paragraph (c)(3)(iv) of this section.

* * * * *

(c) * * *

(3) * * *

(i) * * *

[10] See footnote 8 to § 22.715(a)(4).

* * * * *

■ 38. Section 22.825 is amended by:
■ a. Revising paragraph (a).
■ b. In paragraph (b)(2)(ii), removing ''OMB Circular A–133, where that Circular is applicable'' and adding ''OMB guidance in subpart F of 2 CFR part 200, where that guidance is applicable'' in its place.

The revision reads as follows:

§ 22.825 Closeout audits.

(a) *Purpose.* This section establishes DoD policy for obtaining audits at closeout of individual grants and cooperative agreements.

* * * * *

APPENDIX B TO PART 22—[REMOVED]

■ 39. Appendix B to part 22 is removed.

APPENDIX C TO PART 22—[REMOVED]

■ 40. Appendix C to part 22 is removed.

PART 32—[REMOVED]

■ 41. Under the authority of 5 U.S.C. 301 and 10 U.S.C. 113, part 32 is removed.

PART 33—[REMOVED]

■ 42. Under the authority of 5 U.S.C. 301 and 10 U.S.C. 113, part 33 is removed.

PART 34—[Amended]

■ 43. The authority citation for part 34 continues to read as follows:

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

§ 34.1 [Amended]

■ 44. Section 34.1 is amended in paragraph (b)(2)(ii) by removing ''(*e.g.,* 32 CFR part 33 specifies requirements for subrecipients that are States or local governments, and 32 CFR part 32 contains requirements for universities or other nonprofit organizations)''.
■ 45. Section 34.2 is amended by revising the definition of ''Small award'' to read as follows:

§ 34.2 Definitions.

* * * * *

Small award. See the definition for this term in 2 CFR part 1108.

* * * * *

§ 34.3 [Amended]

■ 46. Section 34.3 is amended in paragraph (c) by removing ''Director, Defense Research and Engineering'' and adding ''Assistant Secretary of Defense for Research and Engineering'' in its place.
■ 47. Section 34.12 is amended in paragraph (d) by revising footnote 1 to read as follows:

§ 34.12 Payment.

* * * * *

(d) * * *

[1] For copies of Standard Forms listed in this part, contact regional grants administration offices of the Office of Naval Research. Addresses for the offices are listed in the ''Federal Directory of Contract Administration Services (CAS) Components,'' which is available through the ''CAS Directory'' link at the Defense Contract Management Agency homepage (*http://www.dcma.mil*).

* * * * *

§ 34.15 [Amended]

■ 48. Section 34.15 is amended in paragraph (c)(3)(i) by removing ''$100,000'' and adding ''the simplified acquisition threshold'' in its place.

§ 34.16 [Amended]

■ 49. Section 34.16 is amended by:
■ a. In paragraph (a), removing ''$500,000'' and adding ''$750,000'' in its place; and
■ b. In paragraph (d)(2)(ii):
■ i. In the second sentence, removing ''Defense Contract Management Command (DCMC)'' and adding ''Defense Contract Management Agency (DCMA)'' in its place; and
■ ii. In the third sentence, removing ''DCMC'' and adding ''DCMA'' in its place.

■ 50. Section 34.17 is amended by revising paragraph (b) to read as follows:

§ 34.17 Allowable costs.

* * * * *

(b) *Other types of organizations.* Allowability of costs incurred by other types of organizations that may be subrecipients under a prime award to a for-profit organization is determined as follows:

(1) *Institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes.* Allowability is determined in accordance with the cost principles in subpart E of OMB guidance in 2 CFR part 200. Note that 2 CFR 200.401(c) provides that a nonprofit organization listed in appendix VIII to 2 CFR part 200 is subject to the FAR and DFARS cost principles specified in paragraph (a)(1) of this section for for-profit organizations.

(2) *Hospitals.* Allowability is determined in accordance with the cost principles identified in appendix IX to 2 CFR part 200 (currently 45 CFR part 75).

§ 34.41 [Amended]

■ 51. Section 34.41 is amended in the introductory text by removing ''32 CFR 32.51 and 32.52'' and adding ''subparts A and B of 2 CFR part 1134'' in its place.

■ 52. Appendix A to part 34 is amended by:

■ a. In paragraph 2, removing ''*40 U.S.C. 276c*'' and adding ''*40 U.S.C. 3145*'' in its place.

■ b. In paragraph 3, removing ''40 U.S.C. 327–333'' in both places it appears and adding ''40 U.S.C., chapter 37'' in their places.

■ c. In paragraph 5, removing ''$100,000'' and adding ''$150,000'' in its place.

■ d. Revising paragraph 7.

■ e. Adding paragraphs 8 through 10.

The revision and additions read as follows:

Appendix A to Part 34—Contract Provisions

* * * * *

7. *Debarment and Suspension (E.O.s 12549 and 12689)*—A contract award with an amount expected to equal or exceed $25,000 and certain other contract awards (see 2 CFR 1125.220, which implements OMB guidance at 2 CFR 180.220) shall not be made to parties identified in the Exclusions area of the System for Award Management (SAM Exclusions) as being currently debarred, suspended, or otherwise excluded. This restriction is in accordance with the DoD adoption at 2 CFR part 1125 of the OMB guidance implementing E.O.s 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), ''Debarment and Suspension.''

8. *Wage Rate Requirements (Construction), formerly the Davis Bacon Act.* When required by Federal program legislation, you must take the following actions with respect to each construction contract for more than $2,000 to be awarded using funding provided under this award:

a. Place in the solicitation under which the contract will be awarded a copy of the current prevailing wage determination issued by the Department of Labor;

b. Condition the decision to award the contract upon the contractor's acceptance of that prevailing wage determination;

c. Include in the contract the clauses specified at 29 CFR 5.5(a) in Department of Labor regulations (29 CFR part 5, ''Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction'') to require the contractor's compliance with the Wage Rate Requirements (Construction), as amended (40 U.S.C. 3141–44, 3146, and 3147); and

d. Report all suspected or reported violations to the award administration office identified in this award.

9. *Fly America requirements.* In each contract under which funds provided under this award might be used to participate in costs of international air travel or transportation for people or property, you must include a clause to require the contractor to:

a. Comply with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118, also known as the ''Fly America'' Act), as implemented by the General Services Administration at 41 CFR 301–10.131 through 301–10.143, which provides that U.S Government financed international air travel and transportation of personal effects or property must use a U.S. Flag air carrier or be performed under a cost sharing arrangement with a U.S. carrier, if such service is available; and

b. Include the requirements of the Fly America Act in all subcontracts that might involve international air transportation.

10. *Cargo preference for United States flag vessels.* In each contract under which equipment, material, or commodities may be shipped by oceangoing vessels, you must include the clause specified in Department of Transportation regulations at 46 CFR 381.7(b) to require that at least 50 percent of equipment, materials or commodities purchased or otherwise obtained with Federal funds under this award, and transported by ocean vessel, be transported on privately owned U.S. flag commercial vessels, if available.

PART 37 [Amended]

■ 53. The authority citation for part 37 continues to read as follows:

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

■ 54. Section 37.130 is amended by revising paragraph (c) to read as follows:

§ 37.130 Which other parts of the DoD Grant and Agreement Regulations apply to TIAs?

* * * * *

(c) Portions of other DoDGARs parts apply to TIAs only as cited by reference in this part.

§ 37.225 [Amended]

■ 55. Section 37.225 is amended in the introductory text by removing ''In accordance with § 37.1030, you will report your answers to these questions to help the DoD measure the Department-wide benefits of using TIAs and meet requirements to report to the Congress.'' and adding ''In accordance with § 37.1020, you must document your answers to these questions in the award file.'' in its place.

■ 56. Section 37.620 is revised to read as follows:

§ 37.620 What financial management standards do I include for participants that are nonprofit?

So as not to force system changes for any State, local government, institution of higher education, or other nonprofit organization, your expenditure-based TIA's requirements for the financial management system of any nonprofit participant are the same as those that apply to the participant's other Federal assistance awards.

■ 57. Section 37.635 is revised to read as follows:

§ 37.635 What cost principles do I require a nonprofit participant to use?

So as not to force financial system changes for any nonprofit participant, your expenditure-based TIA will provide that costs to be charged to the research project by any nonprofit participant must be determined to be allowable in accordance with:

(a) Subpart E of OMB guidance in 2 CFR part 200, if the participant is a State, local government, Indian tribe, institution of higher education, or nonprofit organization. In conformance with 2 CFR 200.401(c) of that OMB guidance, a nonprofit organization listed in appendix VIII to 2 CFR part 200 is subject to the cost principles in the Federal Acquisition Regulation (48 CFR subpart 31.2) and Defense Federal Acquisition Regulation Supplement (48 CFR subpart 231.2).

(b) The cost principles identified in appendix IX to the OMB guidance in 2 CFR part 200 (see 45 CFR part 75), if the participant is a hospital.

§ 37.645 [Amended]

■ 58. Section 37.645 is amended in paragraph (b)(1) by removing ''$500,000'' and adding ''$750,000'' in its place.

§ 37.650 [Amended]

■ 59. Section 37.650 is amended in paragraph (c) by removing ''400 Army-

Navy Drive, Arlington, VA 22202'' and adding ''4800 Mark Center Drive, Alexandria, VA 22350–1500'' in its place.

§ 37.660 [Amended]

■ 60. Section 37.660 is amended by redesignating footnote number 4 as footnote number 2.

■ 61. Section 37.665 is revised to read as follows:

§ 37.665 Must I require nonprofit participants to have periodic audits?

Yes, expenditure-based TIAs are assistance instruments subject to the Single Audit Act (31 U.S.C. 7501–7507), so nonprofit participants are subject to their usual requirements under that Act, as implemented by subpart F of 2 CFR part 200. Specifically, the requirements are the same as those in subpart E of 2 CFR part 1128 for grants and cooperative agreements to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes. Note that those requirements also apply to Federally Funded Research and Development Centers (FFRDCs) and other Government-owned, Contractor-Operated (GOCO) facilities administered by nonprofit organizations, because nonprofit FFRDCs and GOCOs are subject to the Single Audit Act.

§ 37.675 [Removed]

■ 62. Section 37.675 is removed.

§ 37.680 [Removed]

■ 63. Section 37.680 is removed.

■ 64. Section 37.690 is revised to read as follows:

§ 37.690 How are nonprofit participants to manage real property and equipment?

For nonprofit participants, your TIA's requirements for vesting of title, use, management, and disposition of real property or equipment acquired under the award are the same as those that apply to the participant's other Federal assistance awards.

■ 65. Section 37.695 is amended by:

■ a. Revising paragraph (b); and

■ b. Removing paragraph (c).

The revision reads as follows:

§ 37.695 What are the requirements for Federally owned property?

* * * * *

(b) The requirements that apply to the participant's other Federal awards, if it is an entity other than a for-profit firm. If the other Federal awards of a participant that is a GOCO or FFRDC administered by a nonprofit organization are procurement contracts, it is appropriate for you to specify the same property standards that apply to those Federal procurement contracts.

■ 66. Section 37.710 is amended by revising paragraph (a) to read as follows:

§ 37.710 What standards do I include for purchasing systems of nonprofit organizations?

(a) So as not to force system changes for any nonprofit participant, your expenditure-based TIA will provide that each nonprofit participant's purchasing system comply with standards that conform as much as practicable with requirements that apply to the participant's other Federal awards.

* * * * *

§ 37.875 [Amended]

■ 67. Section 37.875 is amended by redesignating footnote number 6 as footnote number 3.

■ 68. Section 37.880 is revised to read as follows:

§ 37.880 What requirements must I include for periodic reports on program and business status?

Your TIA must include requirements that, as a minimum, include periodic reports addressing program and, if it is an expenditure-based award, business status. You must require submission of the reports at least annually, and you may require submission as frequently as quarterly (this does not preclude a recipient from electing to submit more frequently than quarterly the financial information that is required to process payment requests if the award is an expenditure-based TIA that uses reimbursement or advance payments under § 37.810(a)). The requirements for the content of the reports are as follows:

(a) The program portions of the reports must address progress toward achieving program performance goals, including current issues, problems, or developments.

(b) The business portions of the reports, applicable only to expenditure-based awards, must provide summarized details on the status of resources (federal funds and non-federal cost sharing), including an accounting of expenditures for the period covered by the report. The report should compare the resource status with any payment and expenditure schedules or plans provided in the original award; explain any major deviations from those schedules; and discuss actions that will be taken to address the deviations. You may require a recipient to separately identify in these reports the expenditures for each participant in a consortium and for each programmatic milestone or task, if you, after consulting with the program official, judge that those additional details are needed for good stewardship.

■ 69. Section 37.890 is amended by redesignating footnote number 7 as footnote number 4 and revising newly redesignated footnote 4 to read as follows:

§ 37.890 Must I require a final performance report?

* * * * *

[4] See footnote 3 to § 37.875(b)(1).

§ 37.895 [Amended]

■ 70. Section 37.895 is amended by redesignating footnote number 8 as footnote number 5.

■ 71. Section 37.920 is revised to read as follows:

§ 37.920 What requirement for access to a nonprofit participant's records do I include in a TIA?

Your TIA must include for any nonprofit participant, including any FFRDC or GOCO administered by a nonprofit organization, the standard access-to-records requirement that subpart B of 2 CFR part 1136 specifies in Section F of OAR Article II (the standard wording for Section F of OAR Article II is provided in appendix B to 2 CFR part 1136).

§ 37.1000 [Amended]

■ 72. Section 37.1000 is amended in paragraph (c) by removing ''§§ 37.1025 through 37.1035'' and adding ''§ 37.1025'' in its place.

§ 37.1010 [Amended]

■ 73. Section 37.1010 is amended in paragraph (l) by removing ''and § 37.680.''

§ 37.1030 [Removed]

■ 74. Section 37.1030 is removed.

§ 37.1035 [Removed]

■ 75. Section 37.1035 is removed.

§ 37.1040 [Removed]

■ 76. Section 37.1040 is removed.

§ 37.1100 [Amended]

■ 77. Section 37.1100 is amended by removing paragraph (g).

■ 78. Appendix D to part 37 is amended by revising Sections B and C to read as follows:

Appendix D to Part 37—What Common National Policy Requirements May Apply and Need to be Included in TIAS?

* * * * *

B. Assurances That Apply to All TIAs

DoD policy is to use a certification, as described in the preceding paragraph, only for a national policy requirement that specifically requires one. The usual approach to communicating other national policy

requirements to recipients is to incorporate them as award terms or conditions, or assurances. Part 1122 of 2 CFR lists national policy requirements that commonly apply to DoD grants and cooperative agreements. It also has standard wording of general terms and conditions to incorporate the requirements in award documents. Of those requirements, the following six apply to all TIAs. (Note that TIAs must generally use the standard wording in 2 CFR part 1122 for the terms and conditions of these six requirements, but not the standard format.)

1. Requirements concerning debarment and suspension in the OMB guidance in 2 CFR part 180, as implemented by the DoD at 2 CFR part 1125. The requirements apply to all nonprocurement transactions.

2. Requirements concerning drug-free workplace in the Governmentwide common rule that the DoD has codified at 32 CFR part 26. The requirements apply to all financial assistance.

3. Prohibitions on discrimination on the basis of race, color, or national origin in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, *et seq.*), as implemented by DoD regulations at 32 CFR part 195. These apply to all financial assistance. They require recipients to flow down the prohibitions to any subrecipients performing a part of the substantive research program (as opposed to suppliers from whom recipients purchase goods or services).

4. Prohibitions on discrimination on the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C. 6101, *et seq.*). They apply to all financial assistance and require flow down to subrecipients, as implemented by Department of Health and Human Services regulations at 45 CFR part 90.

5. Prohibitions on discrimination on the basis of handicap, in section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DoD regulations at 32 CFR part 56. They apply to all financial assistance recipients and require flow down to subrecipients.

6. Preferences for use of U.S.-flag air carriers in the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118), commonly referred to as the ''Fly America Act,'' and implementing regulations at 41 CFR 301–10.131 through 301–10.143, which apply to uses of U.S. Government funds.

C. Other National Policy Requirements

Additional national policy requirements may apply in certain circumstances, as follows:

1. If construction work is to be done under a TIA or its subawards, it is subject to the prohibitions in Executive Order 11246, as amended, on discrimination on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin. You must include the clause provided in 41 CFR 60–1.4(b) in any ''federally assisted construction contract'' (as defined in 41 CFR 60–1.3) under this award unless provisions of 41 CFR part 60–1 exempt the contract from the requirement. The clause will require the contractor to comply with equal opportunity requirements in 41 CFR chapter 60.

2. If the research involves human subjects or animals, it is subject to the applicable requirements identified in appendix C of 2 CFR part 1122.

3. If the research involves actions that may affect the human environment, it is subject to the requirements of the National Environmental Policy Act in paragraph A.4.a of NP Article II, which is found in appendix B of 2 CFR part 1122. It also may be subject to one or more of the other requirements in paragraphs A.4.b through A.4.f, A.5, and A.6 of NP Article II, which concern flood-prone areas, coastal zones, coastal barriers, wild and scenic rivers, underground sources of drinking water, endangered species, and marine mammal protection.

4. If the project may impact any property listed or eligible for listing on the National Register of Historic Places, it is subject to the National Historic Preservation Act of 1966 (54 U.S.C. 306108) as specified in paragraph 11.a of NP Article IV, which is found in appendix D of 2 CFR part 1122.

5. If the project has potential under this award for irreparable loss or destruction of significant scientific, prehistorical, historical, or archeological data, it is subject to the Archaeological and Historic Preservation Act of 1974 (54 U.S.C. Chapter 3125) as specified in paragraph 11.b of NP Article IV, which is found in appendix D of 2 CFR part 1122.

■ 79. Appendix E to part 37 is revised to read as follows:

Appendix E To Part 37—What Provisions May a Participant Need to Include When Purchasing Goods or Services Under a TIA?

A. As discussed in § 37.705, you must inform recipients of any national policy requirements that flow down to their purchases of goods or services (*e.g.,* supplies or equipment) under their TIAs. Note that purchases of goods or services differ from subawards, which are for substantive research program performance.

B. Appendix A to 32 CFR part 34 lists ten national policy requirements that commonly apply to firms' purchases under grants or cooperative agreements. Of those ten, two that apply to all recipients' purchases under TIAs are:

1. *Byrd Anti-Lobbying Amendment* (*31 U.S.C. 1352*). A contractor submitting a bid to the recipient for a contract award of $100,000 or more must file a certification with the recipient that it has not and will not use Federal appropriations for certain lobbying purposes. The contractor also must disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. For further details, see 32 CFR part 28, the DoD's codification of the Governmentwide common rule implementing this amendment.

2. *Debarment and suspension.* A contract award with an amount expected to equal or exceed $25,000 and certain other contract awards (see 2 CFR 1125.220, which implements OMB guidance at 2 CFR 180.220) shall not be made to parties identified in the Exclusions area of the System for Award Management (SAM Exclusions) as being currently debarred, suspended, or otherwise excluded. This restriction is in accordance with the DoD adoption at 2 CFR part 1125 of the OMB guidance implementing E.O.s 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), ''Debarment and Suspension.''

C. The following requirements apply to recipient's purchases under TIAs in the situations specified below:

1. *Equal Employment Opportunity.* Although construction work should happen rarely under a TIA, the agreements officer in that case should inform the recipient that Department of Labor regulations at 41 CFR 60–1.4(b) prescribe a clause that must be incorporated into recipients' and subrecipients' construction contracts under their awards and subawards, respectively. Further details are provided in appendix B to part 22 of the DoDGARs (32 CFR part 22), in section b. under the heading ''Nondiscrimination.'' any ''federally assisted construction contract'' (as defined in 41 CFR 60–1.3) under the award unless provisions of 41 CFR part 60–1 exempt the contract from the requirement. The clause will require the contractor to comply with equal opportunity requirements in 41 CFR chapter 60.

2. *Wage Rate Requirements (Construction), formerly the Davis Bacon Act.* When required by Federal program legislation, you must take the following actions with respect to each construction contract for more than $2,000 to be awarded using funding provided under this award:

a. Place in the solicitation under which the contract will be awarded a copy of the current prevailing wage determination issued by the Department of Labor;

b. Condition the decision to award the contract upon the contractor's acceptance of that prevailing wage determination;

c. Include in the contract the clauses specified at 29 CFR 5.5(a) in Department of Labor regulations (29 CFR part 5, ''Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction'') to require the contractor's compliance with the Wage Rate Requirements (Construction), as amended (40 U.S.C. 3141–44, 3146, and 3147); and

d. Report all suspected or reported violations to the award administration office identified in this award.

3. *Fly America requirements.* In each contract under which funds provided under this award might be used to participate in costs of international air travel or transportation for people or property, you must include a clause to require the contractor to:

a. Comply with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118, also known as the ''Fly America'' Act), as implemented by the General Services Administration at 41 CFR 301–10.131 through 301–10.143, which provides that U.S Government financed international air travel and transportation of personal effects or property must use a U.S. Flag air carrier or be performed under a cost sharing arrangement with a U.S. carrier, if such service is available; and

b. Include the requirements of the Fly America Act in all subcontracts that might involve international air transportation.

4. *Cargo preference for United States flag vessels.* In each contract under which equipment, material, or commodities may be shipped by oceangoing vessels, you must include the clause specified in Department of Transportation regulations at 46 CFR 381.7(b) to require that at least 50 percent of equipment, materials or commodities purchased or otherwise obtained with Federal funds under this award, and transported by ocean vessel, be transported on privately owned U.S. flag commercial vessels, if available.

Dated: October 19, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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Department of Interior

Bureau of Indian Affairs

25 CFR Part 170

Tribal Transportation Program; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 170

[No. BIA–2014–0005; 167A2100DD/AAKC001030/A0A501010.999900 253G]

RIN 1076–AF19

Tribal Transportation Program

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: This final rule updates the Tribal Transportation Program regulations (formerly the Indian Reservation Roads Program) to comply with statutory updates. The Tribal Transportation Program is a program to address the surface transportation needs of Tribes. This rule reflects statutory changes in the delivery options for the program, clarifies the requirements for proposed roads and access roads to be added to, or remain in, the inventory, revises certain sections that were provided for informational purposes, and makes technical corrections.

DATES: This rule is effective December 7, 2016. Compliance with § 170.443 for proposed roads currently in the NTTFI to remain in the inventory is required by November 7, 2017.

FOR FURTHER INFORMATION CONTACT: LeRoy Gishi, Division of Transportation, Office of Indian Services, Bureau of Indian Affairs, (202) 513–7711, *leroy.gishi@bia.gov*.

SUPPLEMENTARY INFORMATION:

I. Executive Summary of Rule
II. Background
III. Responses to Comments Received on the Proposed Rule
IV. Summary of Revisions to the Regulations
V. Procedural Requirements

I. Executive Summary of Rule

This final rule revises 25 CFR part 170 to:

- Comply with legislation governing the Tribal Transportation Program (TTP);
- Reflect changes in the delivery options for the TTP that are available to Tribal governments;
- Make technical corrections to clarify program-related responsibilities and requirements for Tribal governments, the Bureau of Indian Affairs, and the Federal Highway Administration (FHWA);
- Clarify the requirements for proposed roads and access roads to be added to, or remain in, the National Tribal Transportation Facility Inventory (NTTFI), which was formerly known as the Indian Reservation Roads Inventory; and
- Revise certain sections of the current rule that were provided for informational purposes by removing certain sections that are no longer required by statute and adding information to direct the reader to BIA or FHWA Web sites where additional information is available.

On December 19, 2014, BIA and FHWA published a proposed rule for 25 CFR part 170 and then conducted Tribal consultation sessions at six locations throughout the country during January and February of 2015. *See* 79 FR 76192. Written comments on the Proposed Rule were accepted at the consultations as well as by email and mail through March 20, 2015. Before publishing the proposed rule, BIA and FHWA distributed draft revisions of 25 CFR part 170 to Tribes and published a notice of consultations on the draft revisions. These consultations were conducted at three locations in May of 2013. *See* 78 FR 21861 (April 12, 2013).

II. Background

What is the Tribal Transportation Program (TTP)?

The Tribal Transportation Program (TTP) was known as the Indian Reservation Roads (IRR) Program until Congress changed the name to the Tribal Transportation Program (TTP). The TTP is authorized as part of the Federal Lands Highway Program under Chapter 2 of Title 23, to address the surface transportation needs of Tribes.

Who administers the TTP?

The program is jointly administered by the Bureau of Indian Affairs (BIA) and FHWA Office of Federal Lands Highway (FLH). The TTP is managed under a memorandum of agreement between FHWA and BIA that was established in 1983, and amended in 1992. A ''National Business Plan'' will replace both the current memorandum of agreement, as amended, and the Stewardship Plan that was established in 1996.

How was the TTP established?

The TTP's predecessor program, the IRR Program, was established on May 26, 1928. *See* 45 Stat. 750, 25 U.S.C. 318(a). The statute authorized the Secretary of Agriculture (which had responsibility for Federal roads at that time) to cooperate with State highway agencies and DOI to survey, construct, reconstruct, and maintain Indian reservation roads serving Tribal lands. In 1982, Congress created the Federal Lands Highway Program (FLHP) under the Surface Transportation Assistance Act of 1982 (STAA), Pub. L. 97–424. The FLHP is a coordinated program that addresses access needs to and within Indian and other Federal lands, and the TTP continues as a funding category of this program. STAA also expanded the IRR system, as it was then known, to include Tribally-owned public roads as well as state and county-owned roads.

STAA was followed in 1987 by the Surface Transportation Uniform Relocation Assistance Act (STURAA). *See* Pub. L. 100–17. In 1991, Congress enacted the Intermodal Surface Transportation Efficiency Act (ISTEA), which authorized 2 percent of program funds to be used for transportation planning. *See* Pub. L. 102–240. ISTEA also established Indian Local Technical Assistance Program (Indian LTAP) Centers, which are now known as Tribal Technical Assistance Centers (TTACs).

ISTEA was followed by the Transportation Equity Act for the 21st Century (TEA–21), which was signed into law in 1998. *See* Public Law 105–178. TEA–21 authorized $1.6 billion of Federal Highway Trust funds for the IRR Program from Fiscal Years 1998 to 2003, and provided that Tribal governments could request to enter into contracts or agreements under the Indian Self-Determination and Education Assistance Act (ISDEAA), Public Law 93–638, as amended, for IRR Program roads and bridges. TEA–21 also established the Indian Reservation Roads Bridge Program (IRRBP), at 23 U.S.C. 202(d)(3)(B), under which a minimum of $13 million of IRR Program funds were set aside for a nationwide priority program for improving deficient IRR bridges. On May 8, 2003, the FHWA published a final rule for the IRRBP that has since been amended and is found at 23 CFR part 661. TEA–21 also directed the Secretary of the Interior to establish a negotiated rulemaking committee to develop regulations governing the IRR program along with a formula for the distribution of IRR Program funds. Interior established the negotiated rulemaking committee and published the Final Rule on July 19, 2004 at 25 CFR part 170. *See* 69 FR 43090. Since that rule was published, Congress has enacted three statutory updates that affect the TTP, including changing the name of the program from the IRR Program to the TTP. The final rule published today reflects regulatory changes necessary to implement those statutory updates.

What is the purpose of the TTP?

The purpose of the TTP is to provide safe and adequate transportation and public roads that are within, or provide

access to, Tribal land, or are associated with a Tribal government, visitors, recreational users, resource users, and others, while contributing to economic development, self-determination, and employment of Indians and Alaska Natives. As of October 2015, the NTTFI consisted of approximately 47,900 miles of BIA and Tribally-owned public roads, 101,300 miles of State, county, and local government public roads, and 12,500 miles of proposed roads.

How is the TTP funded?

The TTP is authorized under 23 U.S.C. 202 and receives its funding through the Department of Transportation's annual appropriations act. BIA and FHWA jointly administer the distribution of TTP funds as directed under 23 U.S.C. 202(b) and other applicable laws and regulations.

What statutory updates does this final rule address?

This final rule addresses updates from three statutes:

- The Safe, Accountable, Flexible and Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU), Public Law 100–59 (August 10, 2005);
- Moving Ahead for Progress in the 21st Century Act (MAP–21), Public Law 112–141 (July 6, 2012); and
- The ''Fixing America's Surface Transportation Act (FAST Act), Public Law 114–94 (December 4, 2015), which became effective, retroactive to October 1, 2015.

A year after Interior published its 2004 final rule, Congress enacted the SAFETEA–LU, which effectively amended certain provisions of the regulations, but the regulations have not been revised until today. Additionally, SAFETEA–LU for the first time authorized the Secretary of Transportation and the Secretary of the Interior (Secretaries) to enter into what are known today as ''Program Agreements'' that allow Tribes to carry out all but the inherently Federal functions of the TTP in accordance with the ISDEAA.

MAP–21 struck the existing laws governing the IRR Program and established the TTP. *See* section 1119, Public Law 112–141, (striking the IRR Program from 23 U.S.C. 201–204, and establishing the TTP at 23 U.S.C. 201 and 202). MAP–21 also created a new formula for distribution of TTP funds among Tribes, which had the effect of overriding the Relative Need Distribution Formula (RNDF) that was published in 2004 at 25 CFR part 170, subpart C. *See* 23 U.S.C. 202 (b)(3). Although the RNDF is no longer used to directly determine Tribal share funding, certain historical aspects of the RNDF continue to be factors in the current TTP formula calculations. MAP–21 also identified how certain roads included in the NTTFI impact funding within the new formula. *See* 23 U.S.C. 202 (b)(1). In addition, MAP–21 provided new definitions for terms utilized in the TTP. *See* section 1103, Public Law 112–141.

The FAST Act kept the changes enacted by Congress under MAP–21, but added annual reporting requirements at 23 U.S.C. 201 (c)(6)(C). *See* section 1117, Public Law 114–94.The FAST Act also created the Tribal Transportation Self-Governance Program (TTSGP) at 23 U.S.C. 207, and directed the Secretary of Transportation to engage in negotiated rulemaking to develop regulations governing the TTSGP. *See* section 1121, Public Law 114–94. Except for references to TTSGP as a contracting option, this rule does not address the TTSGP.

How did the Department handle public comments on the proposed rule?

The proposed rule was published on December 19, 2014, and provided for a 120-day comment period through March 20, 2015. The Department received electronic and written comments and posted them on its Web site at *www.regulations.gov.* We received many comments at Tribal consultation sessions and received 21 written comment submissions during the public comment period. Most comment submissions contained more than one comment on a variety of issues in the proposed rule. The written comment submissions and transcripts of the consultation meetings are available at *www.bia.gov/WhoWeAre/BIA/OIS/Transportation.*

The Federal workgroup either accepted comments, accepted comments with modification(s), or rejected comments. This preamble includes a discussion of the changes from the proposed rule to this final rule that were a result of major substantive public comments received on the proposed rule.

Some commenters made recommendations for changes that were not accepted or not acted upon for various reasons (such as requests for unnecessary detail, unclear requests, requests or comments that were unresponsive to the proposed rule or comments that were beyond the scope of the rule). Some commenters made statements of opinion or position, but requested or indicated no changes. Several commenters discussed issues that were the responsibility of other government entities and were therefore beyond the authority of the Secretary of the Interior to change. We did not adopt these changes. Some commenters requested modifications that required additional statutory authority or modifications to the statutory funding formula for the TTP and their comments could not be adopted. A few commenters made suggestions for grammatical changes which were accepted.

In addition to changes based on public comments, DOI reviewed the rule for legal and policy issues and edited the rule for clarity, conciseness, and **Federal Register** format. Some sections were combined or rearranged and others were revised under Departmental or **Federal Register** requirements. Where questions and answers were found not to be entirely consistent in language, we revised them for consistency.

What other changes does the final rule make?

Beyond the changes discussed above, the final rule carries forward changes included in the proposed rule to reflect MAP–21's new, statutory funding formula for the TTP that replaced the funding formula developed through negotiated rulemaking (and included in 25 CFR part 170, dated July 19, 2004). MAP–21 established a four-year transition into the statutory formula beginning with Fiscal Year 2013 through Fiscal Year 2016. The FAST Act did not change the funding formula established by MAP–21, so the formula used to allocate TTP funds for Fiscal Year 2016 will be applied in future years, as well.

Additionally, the final rule reflects the FAST Act's new Tribal reporting requirements involving TTP obligations and expenditures, descriptions and status information of projects and activities that are being undertaken, and number of jobs created or retained by those projects and activities.

We also made editorial and substantive changes to clarify or correct omissions in the proposed rule. These include responding to the many helpful written comments and discussions at the consultations citing the convenience of ''one-stop shopping'' for users of this part, so updated appendices have returned in the final rule.

Changes were also made to subpart D—Transportation Improvement Programs, where we clarified the processes and requirements for submission and approval of a Tribal Transportation Improvement Program (TTIP).

The final rule also adds section 170.240 to reflect the annual reporting requirements as required by 23 U.S.C. 201(c)(6)(C).

III. Responses to Comments Received on the Proposed Rule

The following summarizes and addresses the major, substantive comments received on each subpart of the proposed rule. In some instances, several commenters are represented as one comment—having made similar or identical comments. Grammatical changes, minor wording revisions, and other purely style-oriented comments are not discussed; however, changes to the final rule reflect such public comments. The section number references are to the final rule.

A. Subpart A—Policies, Applicability, and Definitions

Comment: The rule should clarify and discuss in greater detail FHWA's expanded role in the TTP since the enactment of SAFETEA–LU in 2005.

Response: References to ''FHWA'' were added in many locations to better reflect the joint program management and oversight responsibility that FHWA shares with BIA for the TTP.

Comment: Change the language in § 170.2(e) from ''should'' to ''shall'' or ''must,'' when referring to how the Secretaries interpret Federal laws or regulations to facilitate the inclusion of programs covered by this part or government-to-government agreements.

Response: The language in § 170.2(e) was adopted as part of the negotiated rulemaking and no change was made in the proposed or final rule. The Secretaries must interpret Federal laws or regulations liberally in favor of Tribes.

Comment: A Tribe asked how the Secretary's policy facilitates Tribal planning, and asked what the contractible, non-inherently Federal administrative functions are.

Response: The final rule reinserts appendix A to subpart E, which identifies the non-contractible functions of the TTP. The Department commits to future consultation with Tribes on how to refine this list of non-contractible functions.

Comment: Add language referencing fiscal constraints of the TTP such as the phrase ''subject to available funding.''

Response: All of the contracting methods available under the TTP, including the ISDEAA, Program Agreements, self-governance and other appropriate agreements, include the phrase ''subject to available funding'' or similar language referencing fiscal constraints. A definition for financial constraint or fiscal constraint was added to § 170.5.

Comment: Substitute the term ''transit facility'' for ''bus station'' in the definition of ''BIA Transit Facility.''

Response: The final rule makes this change in the definition.

Comment: The rule should specify how and which Federal transportation programs besides the TTP will require Tribal consultations.

Response: No changes were made because this rule addresses only the TTP. FHWA and BIA must abide by Federal law, Executive Orders, and Departmental policies on Tribal consultations.

Comment: Correct the statutory citation for the definition of ''maintenance'' and define ''preventive maintenance'' to enhance principles of asset management.

Response: We corrected the definition of ''maintenance'' and we added a definition for ''preventative maintenance.''

Comment: Expand the definition of ''National Tribal Transportation Facility'' to reflect the full statutory definition.

Response: This change was made and the definition now reflects the full statutory definition.

Comment: Clarify the definitions of ''program agreement'' and ''program management and oversight (PM&O) funds'' to reflect that a portion of ''program related administrative expenses'' (PRAE) may be made available to Tribes contracting for the TTP using program agreements.

Response: The final rule clarifies the definition of ''program agreement'' along with § 170.613, which refers to the source of funds used to pay for non-contractible, inherently Federal PM&O/PRAE activities.

Comment: The change in the definition of ''access road'' was unnecessary, but if changes are to be made they should reflect the recommendation of the TTP Coordinating Committee.

Response: The definition of ''access road'' was simplified, and § 170.447 was added and reflects the TTP Coordinating Committee's unanimous recommendation, which was accepted by the Secretaries, on the allowable lengths for an access road that may be included in the NTTFI.

Comment: Include a statutory citation supporting the authority for ''other appropriate agreements'' within the definition of ''agreement,'' with a clarification that ''other appropriate agreements'' are optional for Tribes and not mandatory under the TTP.

Response: The final rule adds the requested citation to the definition of ''agreement,'' but the requested clarification is unnecessary because the TTP does not mandate use of a particular program delivery option among those available to Tribes.

Comment: In addition to defining the term ''asset management,'' add the term ''preventative maintenance'' as well.

Response: The final rule adds the definition of ''preventative maintenance.''

Comment: The ''BIA system inventory'' should not be limited to the pre-2004 limitation on inclusion in the NTTFI.

Response: No change was made because the definition reflects the statutory language established under MAP–21 and carried forward by the FAST Act.

Comment: Substitute the phrase ''transit facility'' for the phrase ''bus station'' because ''transit facility'' is less restrictive.

Response: The final rule substitutes ''transit facility'' for ''bus station'' throughout the rule.

Comment: The definition of ''constrained funding'' needs additional information discussing financially constrained Transportation Improvement Programs.

Response: The final rule clarifies the definition of ''constrained funding'' and modifies § 170.421 to include additional information.

Comment: Clarify the definition of ''exterior boundaries'' at § 170.5 to correspond to boundaries established by other laws, or the laws and regulations governing other programs.

Response: For purposes of the TTP, the final rule includes ''exterior boundaries'' under the definition of ''access road.''

Comment: Clarify the definition of ''consultation'' to be consistent with Federal directives and insure that Tribal consultation is meaningful and carried out before a proposed decision or policy is implemented.

Response: The final rule moves the definition to Subpart B, Tribal Transportation Program Policy and Eligibility, under the subheading ''Consultation, Collaboration, and Coordination,'' and clarifies the term at § 170.100(a) with links to the Departments' Consultation Policies and Plans.

Comment: Create a new definition for ''proposed primary access route,'' and add the statutory language referencing ''the shortest practicable distance between two points.''

Response: The final rule adds a definition for primary access route and clarifies the definition of all proposed facilities.

Comment: Add language tracking the requirements of 23 U.S.C. 202(b)(1)(D)

regarding additional facilities that may be added to the NTTFI.

Response: The final rule adds language referencing additional facilities so the final definition of ''National Tribal Transportation Facility Inventory (NTTFI)'' adheres to the statute.

Comment: Provide more clarity in the definition of ''public road'' as to what roadways could be considered truly public rather than roadways that require a separate right-of-way.

Response: No changes were made. The language in the rule tracks the definition of ''public road'' at 23 U.S.C. 101(a)(21). Other regulations address the requirements for right-of-ways on Tribal lands held in trust by the United States. *See* 25 CFR part 169.

Comment: There should be additional limitations on inclusion of proposed roads in the NTTFI.

Response: The final rule updates requirements for adding proposed roads to the NTTFI under § 170.443, based upon recommendations by the TTPCC that were accepted by the Secretaries.

B. Subpart B—Tribal Transportation Program Policy and Eligibility

Comment: The regulation should require States to consult with Tribal governments as part of the public comment process before submitting a State Transportation Improvement Program for approval by FHWA.

Response: The statutory requirements for State-Tribal consultation for Statewide transportation planning and projects are referenced in §§ 170.105 through 170.110.

Comment: Modify the appendix to subpart B's list of eligible uses of TTP funds to allow for specific, additional eligible uses for the funds.

Response: The appendix contains an extensive list of eligible uses of TTP funds, with directions that the list should be interpreted in a manner that permits, rather than prohibits, the proposed use of funds. Section 170.113 provides instructions for seeking Secretarial approval for additional uses of TTP funds.

Comment: Add the requirements for approval of purchase construction equipment to the regulation.

Response: The final rule adds § 170.113(a) to address this comment.

Comment: Include a reference in each section of the rule that discusses the availability of non-TTP funds to 23 U.S.C. 202(a)(9), which authorizes funds received from States, counties, or local governments to be credited to the TTP.

Response: The final rule's sections discussing the availability of non-TTP funds now include a reference to 23 U.S.C. 202(a)(9) and direct the reader to § 170.627, which describes the requirements for implementation of 23 U.S.C. 202(a)(9). *See* §§ 170.125, 170.131, 170.133. Additionally, the limitation on the source of funds eligible for transfer in § 170.627 of the proposed rule was removed in accordance with the direction provided under 23 U.S.C. 202(a)(9) that any funds received from a State, county or local subdivision shall be credited to the TTP.

Comment: Require each member of the Tribal Transportation Coordinating Committee (TTPCC) to communicate regularly and substantively with all of the Tribes in the region the member represents.

Response: The final rule includes a new section that requires members of the TTPCC to disseminate information from TTPCC meetings to the Tribes they represent. *See* § 170.137(d).

C. Subpart C—Tribal Transportation Program Funding

Comment: Several factors contributing to the determination of Tribal shares under the TTP funding formula should be changed.

Response: The factors contributing to determination of Tribal shares under the TTP funding formula are directed by statute at 23 U.S.C. 202(b) and cannot be changed by regulation.

Comment: The TTP funding formula fails to take into consideration the number of acres of lands held in trust by the Secretary for a Tribe.

Response: The factors contributing to determination of Tribal shares under the TTP funding formula are directed by statute at 23 U.S.C. 202(b) and cannot be changed by regulation.

Comment: Change § 170.226 to provide for Tribal appeals of the calculation of their share of funds determined by the TTP funding formula.

Response: Section 170.226 provides for Tribal appeals of population data. The remainder of the data used in the TTP funding formula for determining Tribal shares cannot be subject to appeal because it is determined by the statutory formula found at 23 U.S.C. 202(b).

D. Subpart D—Planning, Design, and Construction of Tribal Transportation Program Facilities

Comment: Include the development of a Long Range Transportation Plan (LRTP) as an eligible use of planning funds.

Response: The final rule now includes the development of an LRTP as an eligible use of planning funds.

Comment: Add Tribal newspapers as an acceptable resource for providing notice to the public of Tribal transportation planning or focus group meetings as required under § 170.413(a)(1).

Response: The final rule now allows the use of publicly-distributed Tribal newspapers for providing notice of Tribal transportation planning or focus group meetings. *See* § 170.413(a)(1).

Comment: It is unclear whether financial constraints apply to a Transportation Improvement Program (TIP).

Response: The final rule modifies § 170.421 to clarify the applicability of financial constraint requirements to a TIP.

Comment: Clarify whether projects funded by non-TTP sources and made available under agreements authorized by 23 U.S.C. 202(a)(9) must be included on a Tribal Transportation Improvement Program (TTIP).

Response: The final rule clarifies § 170.421 and now provides that all such projects must be included on a TTIP.

Comment: The process for amending an approved TTIP should not require additional public involvement.

Response: The final rule clarifies the public involvement requirements for amending a TTIP, and now closely follows the planning requirements for states as directed by 23 U.S.C. 134 and 135. *See* §§ 170.422, 170.423.

Comment: The rule should explain the difference between those transportation facilities in the NTTFI that generate funding and those that do not.

Response: The statute establishes the road mileage that must be used to generate funding as part of the formula. Even though a road does not generate funding, however, it does not mean that it has or will be removed from the NTTFI.

Comment: If the intent of the BIA is to remove proposed roads that do not meet the requirements to be included in the NTTFI, then clarify whether the roads that are removed will generate funding under the formula.

Response: The final rule describes the information that must be updated within one year of publication of the final rule in order for a proposed road to remain in the NTTFI. *See* § 170.443. While the road may be removed from the NTTFI, the statute directs that the mileage of the removed road continue to generate funding if it meets the eligibility requirements of the funding formula's mileage factor. *See* 23 U.S.C. 202 (b)(3)(B)(i).

Comment: Clarify the right-of-way or easement documentation requirements for a proposed route to be added to, or remain in, the NTTFI.

Response: The final rule defines the documentation requirements for a proposed road to be added to, or remain in, the NTTFI. *See* § 170.443.

Comment: Include the boundaries to be used for determining the maximum length of an access road.

Response: The final rule adds a new section that identifies the boundaries used to determine the maximum length of an access road that were developed by consensus recommendation of the TTPCC and accepted by the Secretaries. *See* § 170.447.

Comment: Do not impose deadlines for submitting data for transportation facilities to be added to the NTTFI.

Response: This comment was rejected because the deadlines are required for BIA and FHWA to generate an official NTTFI for administrative and reporting purposes for each fiscal year.

Comment: Data specifying incidental costs should no longer be part of the requirements for an NTTFI submission.

Response: Incidental costs data is a requirement because the overall cost to improve the NTTFI is needed for administrative and reporting purposes for each fiscal year.

Comment: The proposed rule omits references to statutory or regulatory provisions that expand authority to use Categorical Exclusions under the National Environmental Policy Act (NEPA) to streamline the requirements for environmental compliance for projects involving the construction or maintenance of roads.

Response: The final rule adds a new section that provides that the Categorical Exclusions for NEPA at 23 CFR 771.117 shall apply to all qualifying TTP projects involving the construction or maintenance of roads. *See* § 170.453.

Comment: Modify § 170.460(c) to be consistent with the requirements of 25 CFR part 169.

Response: The final rule modifies § 170.460(c) to state that the project package must comply with the requirements of 25 CFR part 169, if applicable.

Comment: Tribes operating the program under the terms of a TTP addendum to a self-governance compact should be required to submit project packages to BIA or FHWA, or otherwise comply with § 170.460.

Response: The final rule removes the submission requirements from § 170.460, but similar requirements remain in § 170.461 because BIA and FHWA need this information to fulfill their stewardship and oversight responsibility for the expenditure of TTP funds. Additionally, while the language was slightly modified in the proposed rule, this requirement was developed as part of the negotiated rule published in 2004.

Comment: Section 170.471 of the proposed rule needs to better clarify the roles and responsibilities of the parties in administering projects under Program Agreements.

Response: The final rule revises § 170.471 to identify that the administration of the project will be carried out in accordance with 25 CFR part 170 and the agreement in effect between the Tribe and the BIA or FHWA.

Comment: Section 170.473 should state that a right-of-way is not required where a Tribe is constructing a road on its trust or restricted fee land if no other interests in the land are affected.

Response: The comment was not adopted. 25 CFR part 169 controls the requirements for obtaining or otherwise administering right-of-ways, not 25 CFR part 170.

Comment: Section 170.502 should include a reference to Federal and Tribal management systems for maintenance.

Response: The comment was not adopted. TTP funds are intended to be used primarily for construction; maintenance is addressed by other appropriations.

Comment: Development of a nationwide TTP management system should be done in consultation with Tribes.

Response: The reference to consultation was removed from the proposed rule in error; it has been corrected by returning the consultation reference to the rule.

E. Subpart E—Service Delivery for Tribal Transportation Program

Comment: Add a reference to partial year funding to Notice of Funds Availability in § 170.600.

Response: The final rule includes this change.

Comment: The rule should identify the funds that can be used to pay for non-contractible functions and activities.

Response: The final rule adds § 170.613 to provide this information.

Comment: Add a new section that discusses funds awarded and transferred to Tribes pursuant to 23 U.S.C. 202(a)(9) for distribution under their current TTP delivery mechanisms.

Response: The final rule adds § 170.627 in response to this comment.

F. Subpart F—Program Oversight and Accountability

Comment: Sections 170.702 through 170.704 of the proposed rule establish a new Federal authority to review and monitor the performance of all TTP activities.

Response: The final rule clarifies that TTP reviews are carried out in accordance with Title 23 of the CFR, the terms of the Tribe's TTP delivery mechanism, including Program Agreements or other appropriate agreements, 2 CFR part 200 as applicable, and the National Business Plan.

G. Subpart G—Maintenance Programs

Comment: The regulation should include the BIA Road Maintenance Program (RMP) and the use of those funds on BIA system roads.

Response: The final rule does not include the RMP because the RMP is not authorized by Title 23 or funded by the TTP. Subpart G was updated to reflect changes in SAFETEA–LU that were later modified in MAP–21 and carried forward in the FAST Act, and to clarify the eligible maintenance activities funded only through the TTP.

Comment: The rule should include language to ensure that the Secretary of the Interior provides the necessary funding to address maintenance of the BIA Road System.

Response: Funding for the RMP comes from appropriations for the Department of the Interior, Bureau of Indian Affairs. Since the RMP is not authorized by Title 23 or funded by the TTP, the rule does not address the RMP, nor can it seek to compel the Secretary of the Interior to request funding for the BIA Road System.

Comment: Reinstate the appendix listing maintenance activities eligible for TTP funding.

Response: The final rule updates the appendix and returns it to its rightful place in the rule.

H. Subpart H—Miscellaneous Provisions

Comment: Revise § 170.910 to better describe where Tribes can obtain TTP information and the role of BIA or FHWA for providing additional program or project information.

Response: The final rule identifies the BIA and FHWA TTP Web sites and clarifies the responsibility of BIA or FHWA to respond to Tribal requests for TTP information that may not be available on their respective Web sites.

Comment: Reinstate § 170.926 and discuss the varied ways that Tribes can contract to perform TTP functions, services and activities.

Response: The final rule does not reinstate § 170.926 because § 170.627 discusses the varied ways Tribes can contract to perform TTP functions, services and activities.

Comment: Reinstate non-TTP reference information in the final rule.

Response: The rule covers only the TTP but the rule directs the reader to BIA, FHWA or other Web sites where current information may be found.

Comment: Expand § 170.943 that discussed the Tribal High Priority Projects Program.

Response: The FAST Act did not reauthorize the Tribal High Priority Projects Program, which made § 170.943 inapplicable. For this reason, the final rule removes § 170.943.

I. Additional Comments

Comment: Reinstate the appendices to subparts B, C, D, E and G.

Response: The final rule reinstates the appendices for subparts B, D, E and G. The appendices to subpart C were not reinstated because they were superseded by the statutory funding formula enacted under MAP–21 at 23 U.S.C. 202(b), which was carried forward by the FAST Act.

Comment: Change specific items that appear in the appendices to the negotiated rule published in 2004.

Response: The appendices to subparts B, D, E and G that have been reinstated were revised only to reflect statutory changes, modifications recommended by the TTPCC and approved by the Secretaries, or where further clarification was necessary.

IV. Summary of Revisions to the Regulations

Revisions to Subpart A—General Provisions and Definitions

The final rule revises this subpart to:

- Be consistent with the language used throughout 23 U.S.C. 201 and 202;
- Outline the policies, guidance manuals, directives, and procedures that govern the TTP under the program delivery options that are available to Tribes; and
- Include new and updated definitions that are used throughout the rule.

Revisions to Subpart B—Tribal Transportation Program Policy and Eligibility

The final rule revises this subpart to be consistent with the FAST Act by:

- Revising the language discussing Federal, Tribal, State, and local governments' coordination, collaboration, and consultation responsibilities;
- Updating the list of eligible uses of TTP funding and the point of contact information for funding eligibility requests;
- Updating provisions regarding cultural access roads, toll roads, recreation, tourism, trails, airport access roads, transit facilities and seasonal transportation routes;
- Changing the name ''Indian Local Technical Assistance Program'' to ''Tribal Technical Assistance Centers'' (TTACs);
- Including a description of the eligible uses and distribution of TTP-Safety set-aside funding; and
- Updating the TTP Coordinating Committee responsibilities regarding information dissemination requirements and scheduling of committee meetings.

Revisions to Subpart C—Tribal Transportation Program Funding

The final rule revises this subpart to do the following:

- Remove the chart showing the flow of TTP funds;
- Reflect the statutory formula and methodology as contained in 23 U.S.C. 202 to distribute TTP funds including new formula factors, set-asides, supplemental funding and transition period;
- Remove the sections of the current regulation governing the IRR Program High Priority Projects, as it no longer exists;
- Revise how the NTTFI relates to the long-range Tribal transportation planning process;
- Revise the appeal process for fund distribution to be consistent with 23 U.S.C. 202; and
- Remove the appendices to subpart C of the current regulation because they are not applicable to the statutory funding formula established in 23 U.S.C. 202.

Revisions to Subpart D—Planning, Design, and Construction of Tribal Transportation Program Facilities

This subpart contains revisions to the sections involving NTTFI submissions, and the review and approval of plans, specifications and estimates (PS&Es). A section on the TTP Bridge Program was added to reflect the changes as a result of the enactment of MAP–21. A section on Tribal data collection and reporting was added to reflect the requirements of 23 U.S.C. 201(c)(6)(C) that were added as a result of the FAST Act.

Revisions to Subpart E—Service Delivery for Tribal Transportation Program

This subpart revises the sections involving Notice of Funds Availability (NOFA), contracts and agreements, including savings. The final rule also updates the appendix to subpart E to be consistent the FAST Act.

Revisions to Subpart F—Program Oversight and Accountability

This subpart revises the stewardship and oversight roles and responsibilities for the TTP to reflect changes in the way the TTP is delivered to Tribes. The current regulations regarding program reviews were moved to this subpart and updated to be consistent with the FAST Act.

Revisions to Subpart G—Maintenance

The final rule updates this subpart to clarify the maintenance activities and funding amounts that are eligible for TTP funding as identified in 23 U.S.C. 202(a)(8).

Revisions to Subpart H—Miscellaneous

The final rule updates this subpart to be consistent with statutory references that changed due to the enactment of several highway authorization laws (SAFETEA–LU, MAP–21, and FAST Act). The sections involving emergency relief and hazardous and nuclear waste transportation were removed because they contained only reference information that is now available on BIA and FHWA Web sites.

V. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866 and 13563)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

B. Regulatory Flexibility Act

This rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

because Tribes are not small entities under the Regulatory Flexibility Act.

C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Does not have an annual effect on the economy of $100 million or more because this rule affects only surface transportation for Tribes.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions because it does not affect costs or prices.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises because the rule addresses Tribal surface transportation within the United States.

D. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

E. Takings (E.O. 12630)

This rule does not affect a taking of private property or otherwise have taking implications under E.O. 12360. A takings implication assessment is not required.

F. Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132, this rule does not have sufficient Federalism implications to warrant the preparation of a summary impact statement, because the rule primarily addresses the relationship between the Federal Government and Tribes. A Federalism summary impact statement is not required.

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

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

H. Consultation With Indian Tribes (E.O. 13175 and Departmental Policy)

The Department of the Interior strives to strengthen its government-to-government regulations with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the Department's consultation policy and have identified substantial direct effects on federally recognized Indian Tribes that will result from this rule. This rule will affect funding for Tribes' surface transportation needs under the TTP. Accordingly, we have consulted with the affected Tribes on a government-to-government basis and have fully considered Tribal views in the final rule. Specifically, as discussed above, we held multiple consultation sessions with Tribes during development of the proposed rule and during the public comment period on the proposed rule.

I. Paperwork Reduction Act

This rule contains information collection requirements, and the Office of Management and Budget (OMB) has approved the information collections under the Paperwork Reduction Act (PRA).

OMB Control Number: 1076–0161.

Title: 25 CFR 170, Tribal Transportation Program.

Brief Description of Collection: The information submitted by Tribes allows them to participate in planning the development of transportation needs in their area; the information provides data for administration, documenting plans, and for oversight of the program by the Department. The revision accounts for updates made to the regulations as a result of passage of MAP–21 and FAST Act legislation. Some of the information such as the providing inventory updates (25 CFR 170.444), the development of a long range transportation plan (25 CFR 170.411 and 170. 412), the development of a Tribal transportation improvement program (25 CFR 170.421), and annual report (25 CFR 170.420) are mandatory to determine how funds will allocated to implement the Tribal Transportation Program. Some of the information, such as public hearing requirements, is necessary for public notification and involvement (25 CFR 170.437 and 170.438), while other information, such as a request for exception from design standards (25 CFR 170.456), is voluntary.

Type of Review: Revision of currently approved collection.

Respondents: Federally recognized Indian Tribal governments.

Number of Respondents: 281 on average (each year).

Number of Responses: 1,630 on average (each year).

Frequency of Response: On occasion.

Estimated Time per Response: (See table below).

Estimated Total Annual Hour Burden: 23,448 hours.

Citation 25 CFR 170	Information	Average number of hours per response	Average number responses per year	Estimated annual burden hours
170.240	Annual Report	20	281	5,620
170.443	Provide and Review Information	20	141	2,820
170.411	Long Range Transportation Plan Contents	40	113	4,520
170.421	Reporting Requirement for Tribal Transportation Improvement Program (TTIP).	10	281	2,810
170.420	Reporting Requirement for Tribal Priority List	10	281	2,810
170.412	Submission of Long Range Transportation Plan to BIA and Public, and Further Development.	40	113	4,520
170.437	Notice of Requirements for Public Hearing	0.5	205	103
170.439	Record keeping Requirement—Record of Public Hearing	1	205	205
170.456	Provide Information for Exception	4	10	40

OMB Control No. 1076–0161 currently authorizes the collections of information contained in 25 CFR part 170. If this proposed rule is finalized, the annual burden hours for respondents will increase by approximately 5,420 hours, primarily because of the new statutory requirement for an annual report (the increase is less than the full 5,620 estimated hours because a previously identified information collection requirement was removed under this rule).

The recordkeeping requirements contained in section 170.472 are authorized under OMB Control No. 1076–0136, applicable to self-determination and self-governance contracts and compacts under 25 CFR 900 and 1000.

Please note that an agency may not sponsor or request, and an individual need not respond to, a collection of information unless it displays a valid OMB Control Number.

J. National Environmental Policy Act

This rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment because it is of an administrative, technical, and procedural nature. See 43 CFR 46.210(i).

K. Effects on the Energy Supply (E.O. 13211)

This rulemaking is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

List of Subjects in 25 CFR Part 170

Highways and roads, Indians-lands.

■ For the reasons stated in the preamble, the Department of the Interior, Bureau of Indian Affairs, revises part 170 in Title 25 of the Code of Federal Regulations to read as follows:

PART 170—TRIBAL TRANSPORTATION PROGRAM

Subpart A—Policies, Applicability, and Definitions

Sec.
170.1 What does this part do?
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Authority: Pub. L. 112–141, Pub. L. 114–94; 5 U.S.C. 2; 23 U.S.C. 201, 202; 25 U.S.C. 2, 9.

Subpart A—Policies, Applicability, and Definitions

§ 170.1 What does this part do?

This part provides rules and references to the statutory funding formula for the Department of the Interior (DOI), in cooperation with the Department of Transportation (DOT), to implement the Tribal Transportation Program (TTP). Included in this part are references to other title 23 and title 25 transportation programs administered by the Secretary of the Interior (Secretary) and the Secretary of Transportation (together, the ''Secretaries'') and implemented by Tribes and Consortiums in accordance with the Indian Self-Determination and Education Assistance Act of 1975 (ISDEAA), as amended, FHWA program agreements, and other appropriate agreements.

§ 170.2 What policies govern the TTP?

(a) The Secretaries' policy for the TTP is to:

(1) Provide a uniform and consistent set of rules;

(2) Foster knowledge of the programs by providing information about them and the opportunities that they create;

(3) Facilitate Tribal planning, conduct, and administration of the programs;

(4) Encourage inclusion of these programs under self-determination contracts, self-governance agreements, program agreements, and other appropriate agreements;

(5) Make available all contractible non-inherently Federal administrative functions under self-determination contracts, self-governance agreements, program agreements, and other appropriate agreements; and

(6) Carry out policies, procedures, and practices in consultation with Indian Tribes to ensure the letter, spirit, and goals of Federal transportation programs are fully implemented.

(b) Where this part differs from provisions in the ISDEAA, this part should advance the policy of increasing Tribal autonomy and discretion in program operation.

(c) This part is designed to enable Indian Tribes to participate in all contractible activities of the TTP. The Secretaries will afford Indian Tribes the flexibility, information, and discretion to design transportation programs under self-determination contracts, self-governance agreements, program agreements, and other appropriate agreements to meet the needs of their communities consistent with this part.

(d) Programs, functions, services, and activities, regardless of how they are administered, are an exercise of Indian Tribes' self-determination and self-governance.

(1) The Tribe is responsible for managing the day-to-day operation of its contracted Federal programs, functions, services, and activities.

(2) The Tribe accepts responsibility and accountability to the beneficiaries under self-determination contracts, self-governance agreements, program agreements, and other appropriate agreements for:

(i) Use of the funds; and

(ii) Satisfactory performance of all activities funded under the contract or agreement.

(3) The Secretary will continue to discharge the trust responsibilities to protect and conserve the trust resources of Tribes and the trust resources of individual Indians.

(e) The Secretary should interpret Federal laws and regulations to facilitate including programs covered by this part in the government-to-government agreements authorized under ISDEAA.

(f) The administrative functions referenced in paragraph (a)(5) of this section are contractible without regard to the organizational level within the DOI that carries out these functions. Including TTP administrative functions under self-determination contracts, self-governance agreements, program agreements or other appropriate agreements, does not limit or reduce the funding for any program or service serving any other Tribe.

(g) The Secretaries are not required to reduce funding for a Tribe under these programs to make funds available to another Tribe.

(h) This part must be liberally construed for the benefit of Tribes and to implement the Federal policy of self-determination and self-governance.

(i) Any ambiguities in this part must be construed in favor of the Tribes to facilitate and enable the transfer of programs authorized by 23 U.S.C. 201 and 202 and title 25 of the U.S.C.

§ 170.3 When do other requirements apply to the TTP?

TTP policies, guidance, and directives apply, to the extent permitted by law, only if they are consistent with this part and 25 CFR parts 900 and 1000. See 25 CFR 900.5 for when a Tribe must comply with other unpublished requirements.

§ 170.4 How does this part affect existing Tribal rights?

This part does not:

(a) Affect Tribes' sovereign immunity from suit;

(b) Terminate or reduce the trust responsibility of the United States to Tribes or individual Indians;

(c) Require a Tribe to assume a program relating to the TTP; or

(d) Impede awards by other agencies of the United States or a State to Tribes to administer programs under any other law.

§ 170.5 What definitions apply to this part?

Access road means a public highway or road that provides access to Tribal land and appears on the National Tribal Transportation Facility Inventory (NTTFI).

Agreement means a self-determination contract, self-governance agreement, Program Agreement or other appropriate agreement authorized under 23 U.S.C. 202(a)(2), developed in accordance with 23 U.S.C. 202(b)(6) and(b)(7) as well as 23 U.S.C. 207, to fund and manage the programs, functions, services and activities transferred to a Tribe.

Appeal means a request by a Tribe or consortium for an administrative review of an adverse agency decision.

Asset management as defined in 23 U.S.C. 101(a)(2) means a strategic and systematic process of operating, maintaining, and improving physical assets, with a focus on both engineering and economic analysis based upon quality information, to identify a structured sequence of maintenance, preservation, repair, rehabilitation, and replacement actions that will achieve and sustain a desired state of good repair over the lifecycle of the assets at minimum practicable cost.

BIA Force Account means the performance of work done by BIA employees.

BIA Road System means the Bureau of Indian Affairs Road System under the NTTFI and includes only those existing and proposed facilities for which the BIA has or plans to obtain legal right-of-way.

BIA System Inventory means Bureau of Indian Affairs System Inventory under the NTTFI that includes the BIA Road System, Tribally owned public roads, and facilities not owned by an Indian Tribal government or the BIA in the States of Oklahoma and Alaska that were used to generate road mileage for computation of the funding formula in the Indian Reservation Roads Program prior to October 1, 2004.

Consortium means an organization or association of Tribes that is authorized by those Tribes to negotiate and execute an Agreement to receive funding, manage, and carry out the program functions, services, and activities associated with the Tribal Transportation Program on behalf its member Tribes.

Construction, as defined in 23 U.S.C. 101(a)(4), means the supervising, inspecting, actual building, and incurrence of all costs incidental to the construction or reconstruction of a Tribal transportation facility, as defined in 23 U.S.C. 101(a)(31). The term includes—

(1) Preliminary engineering, engineering, and design-related services directly relating to the construction of a Tribal transportation facility project, including engineering, design, project development and management, construction project management and inspection, surveying, mapping (including the establishment of temporary and permanent geodetic control under specifications of the National Oceanic and Atmospheric Administration), and architectural-related services;

(2) Reconstruction, resurfacing, restoration, rehabilitation, and preservation;

(3) Acquisition of rights-of-way;

(4) Relocation assistance, acquisition of replacement housing sites, and acquisition and rehabilitation, relocation, and construction of replacement housing;

(5) Elimination of hazards of railway-highway grade crossings;

(6) Elimination of roadside hazards;

(7) Improvements that directly facilitate and control traffic flow, such as grade separation of intersections, widening of lanes, channelization of traffic, traffic control systems, and passenger loading and unloading areas; and

(8) Capital improvements that directly facilitate an effective vehicle weight enforcement program, such as scales (fixed and portable), scale pits, scale installation, and scale houses.

Construction contract means a fixed price or cost reimbursement self-determination contract for a construction project or an eligible TTP funded road maintenance project, except that such term does not include any contract—

(1) That is limited to providing planning services and construction management services (or a combination of such services);

(2) For the housing improvement program or roads maintenance program of the BIA administered by the Secretary; or

(3) For the health facility maintenance and improvement program administered by the Secretary of Health and Human Services.

Contract means a self-determination contract as defined in section 4(j) of the ISDEAA or a procurement document issued under Federal or Tribal procurement acquisition regulations.

Days means calendar days, except where the last day of any time period specified in this part falls on a Saturday, Sunday, or a Federal holiday, the period will carry over to the next business day unless otherwise prohibited by law.

Design means services related to preparing drawings, specifications, estimates, and other design submissions specified in a contract or agreement, as well as services during the bidding/negotiating, construction, and operational phases of the project.

Financial constraint or Fiscal constraint means that a plan (metropolitan transportation plan, TTIP, or STIP) includes financial information demonstrating that projects can be implemented using committed, available, or reasonably available revenue sources, with reasonable assurance that the federally supported transportation system is adequately operated and maintained. (*See* 23 U.S.C. 134 and 135.) Documentation must be developed that demonstrates that there is a balance between the expected revenue sources for the transportation investments and the estimated costs of the projects and programs described in the planning documents.

(1) For the TTIP and the STIP, financial constraint/fiscal constraint applies to each program year.

(2) Projects in air quality nonattainment and maintenance areas can be included in the first two years of the TTIP and STIP only if funds are ''available'' or ''committed.'' See 23 CFR 450.104.

Governmental subdivision of a Tribe means a unit of a Tribe which is authorized to participate in a TTP activity on behalf of the Tribe.

Indian means a person who is a member of a Tribe or as otherwise defined in 25 U.S.C. 450b.

Maintenance means the preservation of the Tribal transportation facilities, including surface, shoulders, roadsides, structures, and such traffic-control devices as are necessary for safe and efficient utilization of the facility (see 23 U.S.C. 101(13)).

National Bridge and Tunnel Inventory (or NBTI) means the database of structural and appraisal data collected to fulfill the requirements of the National Bridge and Tunnel Inspection Standards, as defined in 23 U.S.C. 144. Each State and BIA must maintain an inventory of all bridges and tunnels that are subject to the NBTI standards and provide this data to the FHWA.

National Tribal Transportation Facility Inventory (or NTTFI) means at

a minimum, transportation facilities that are eligible for assistance under the Tribal transportation program that an Indian Tribe has requested, including facilities that meet at least one of the following criteria:

(1) Were included in the Bureau of Indian Affairs system inventory prior to October 1, 2004.

(2) Are owned by an Indian Tribal government (''owned'' means having the authority to finance, build, operate, or maintain the facility (see 23 U.S.C. 101(a)(20)).

(3) Are owned by the Bureau of Indian Affairs (''owned'' means having the authority to finance, build, operate, or maintain the facility (See 23 U.S.C. 101(a)(20)).

(4) Were constructed or reconstructed with funds from the Highway Trust Fund under the Indian reservation roads program since 1983.

(5) Are public roads or bridges within the exterior boundary of Indian reservations, Alaska Native villages, and other recognized Indian communities (including communities in former Indian reservations in the State of Oklahoma) in which the majority of residents are American Indians or Alaska Natives.

(6) Are public roads within or providing access to either:

(i) An Indian reservation or Tribal trust land or restricted Tribal land that is not subject to fee title alienation without the approval of the Federal Government; or

(ii) Indian or Alaska Native villages, groups, or communities whose residents include Indians and Alaska Natives whom the Secretary has determined are eligible for services generally available to Indians under Federal laws applicable to Indians.

(7) Are primary access routes requested by Tribal governments for inclusion in the NTTFI, including roads between villages, roads to landfills, roads to drinking water sources, roads to natural resources identified for economic development, and roads that provide access to intermodal terminals, such as airports, harbors, or boat landings.

Note: The Secretaries are not precluded from including additional eligible transportation facilities into the NTTFI if such additional facilities are included in a uniform and consistent manner.

Population adjustment factor means a special portion of the former Indian Reservation Roads (IRR) Program distribution formula that was calculated annually and provided for broader participation in the IRR Program.

Preventive Maintenance means the planned strategy of cost effective treatments to an existing roadway system and its appurtenances that preserve the system, impede future deterioration, and maintain or improve the functional condition of the system without increasing structural capacity. Eligible activities should address the aging, oxidation, surface deterioration, and normal wear and tear of the facility caused by day-to-day performance and environmental conditions. In addition, the treatments should extend the service life of the roadway asset or facility to at least achieve the design life of the facility.

Primary access route means a route that is the shortest practicable route connecting two points.

Program means any program, function, service, activity, or portion thereof.

Program Agreement means an agreement between the Tribe and Assistant Secretary—Indian Affairs or the Administrator of the Federal Highway Administration, or their respective designees, that transfer all but the inherently Federal program functions, services and activities of the Tribal Transportation Program to the Tribe. The provisions of 23 U.S.C. 202 (b)(7)(E) apply only to those program agreements entered into by the Administrator of the Federal Highway Administration.

Project planning means project-related activities that precede the design phase of a transportation project. Examples of these activities are: Collecting data on traffic, accidents, or functional, safety or structural deficiencies; corridor studies; conceptual studies, environmental studies; geotechnical studies; archaeological studies; project scoping; public hearings; location analysis; preparing applications for permits and clearances; and meetings with facility owners and transportation officials.

Proposed road or facility means any road or facility, including a primary access route, that will serve public transportation needs, meets the eligibility requirements of the TTP, and does not currently exist.

Public authority as defined in 23 U.S.C. 101(a)(20) means a Federal, State, county, town, or township, Indian Tribe, municipal, or other local government or instrumentality with authority to finance, build, operate, or maintain toll or toll-free facilities.

Public road means any road or street under the jurisdiction of and maintained by a public authority and open to public travel.

Real property means any interest in land together with the improvements, structures, fixtures and appurtenances.

Regionally significant project means a project (other than projects that may be grouped in the STIP/TTIP under 23 CFR 450) that:

(1) Is on a facility which serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals as well as most terminals themselves); and

(2) Would normally be included in the modeling of a metropolitan area's transportation network, including, as a minimum, all principal arterial highways and all fixed guideway transit facilities that offer a significant alternative to regional highway travel.

Rehabilitation means the work required to restore the structural integrity of transportation facilities as well as work necessary to correct safety defects.

Relative need distribution factor means a mathematical formula used for distributing construction funds under the former IRR Program.

Relocation means the adjustment of transportation facilities and utilities required by a highway project. It includes removing and reinstalling the facility, including necessary temporary facilities; acquiring necessary right-of-way on the new location; moving, rearranging or changing the type of existing facilities; and taking any necessary safety and protective measures. It also means constructing a replacement facility that is both functionally equivalent to the existing facility and necessary for continuous operation of the utility service, the project economy, or sequence of highway construction.

Relocation services means payment and assistance authorized by the Uniform Relocation and Real Property Acquisitions Policy Act, 42 U.S.C. 4601 *et seq.,* as amended.

Rest area means an area or site established and maintained within or adjacent to the highway right-of-way or under public supervision or control for the convenience of the traveling public.

Seasonal transportation route means a non-recreational transportation route in the NTTFI such as snowmobile trails, ice roads, and overland winter roads that provide access to Indian communities or villages and may not be open for year-round use.

Secretaries means the Secretary of the Interior and the Secretary of

Transportation or designees authorized to act on their behalf.

Secretary means the Secretary of the Interior or a designee authorized to act on the Secretary's behalf.

Secretary of Transportation means the Secretary of Transportation or a designee authorized to act on behalf of the Secretary of Transportation.

State Transportation Department as defined in 23 U.S.C. 101 (a)(28) means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction.

Statewide Transportation Improvement Program or STIP means a financially constrained, multi-year list of projects developed under 23 U.S.C. 134 and 135, and 49 U.S.C. 5303–5305. The Secretary of Transportation reviews and approves the STIP for each State.

Strip map means a graphic representation of a section of road or other transportation facility being added to or modified in the NTTFI. Each strip map clearly: identifies the facility's location with respect to State, county, Tribal, and congressional boundaries; defines the overall dimensions of the facility (including latitude and longitude); includes a north arrow, scale, designation of road sections, traffic counter locations, and other nearby transportation facilities; and includes a table that provides the facility's data information needed for the NTTFI.

Transit means services, equipment, and functions associated with the public movement of people served within a community or network of communities provided by a Tribe or other public authority using Federal funds.

Transportation planning means developing land use, economic development, traffic demand, public safety, health and social strategies to meet transportation current and future needs.

Tribal road system means the Tribally owned roads under the NTTFI. For the purposes of fund distribution as defined in 23 U.S.C. 202(b), the Tribal road system includes only those existing and proposed facilities that are approved and included in the NTTFI as of fiscal year 2012.

Tribal transit program means the planning, administration, acquisition, and operation and maintenance of a system associated with the public movement of people served within a community or network of communities on or near Tribal lands.

Tribal Transportation Program (*or TTP)* means a program established in Section 1119 of Moving Ahead for Progress in the 21st Century (MAP–21), Pub. L. 112–141 (July 6, 2012), and codified in 23 U.S.C. 201 and 202 to address transportation needs of Tribes. This program was continued under Fixing America's Surface Transportation Act (FAST Act), Pub. L. 114–94 (Dec. 4, 2015).

Tribal transportation facility means a public highway, road, bridge, trail, transit system, or other approved facility that is located on or provides access to Tribal land and appears on the NTTFI described in 23 U.S.C. 202(b)(1).

Tribe or Indian Tribe means any Tribe, nation, band, pueblo, rancheria, colony, or community, including any Alaska Native village or regional or village corporation as defined or established under the Alaska Native Claims Settlement Act, that is federally recognized by the U.S. government for special programs and services provided by the Secretary to Indians because of their status as Indians.

TTIP means Tribal Transportation Improvement Program. It is a multi-year list of proposed transportation projects developed by a Tribe from the Tribal priority list or the long-range transportation plan.

TTP Eligible Transportation Facility means any of the following:

(1) Road systems and related road appurtenances such as signs, traffic signals, pavement striping, trail markers, guardrails, etc;

(2) Highway bridges and drainage structures;

(3) Boardwalks and Board roads;

(4) Adjacent parking areas;

(5) Maintenance yards;

(6) Operations and maintenance of transit programs and facilities;

(7) System public pedestrian walkways, paths, bike and other trails;

(8) Motorized vehicle trails;

(9) Public access roads to heliports and airports;

(10) Seasonal transportation routes;

(11) BIA and Tribal post-secondary school roads and parking lots built with TTP funds;

(12) Public ferry boats and boat ramps; and

(13) Additional facilities as approved by BIA and FHWA.

TTP formula funds means the pool of funds made available to Tribes under 23 U.S.C. 202(b)(3).

TTP funds means the funds authorized under 23 U.S.C. 201 and 202.

TTP planning funds means funds referenced in 23 U.S.C. 202(c)(1).

TTP Program Management and Oversight (PM&O) funds means those funds authorized by 23 U.S.C 202(a)(6) to pay the cost of carrying out inherently Federal program management and oversight, and project-related administrative expenses activities.

TTP System means all of the facilities eligible for inclusion in the NTTFI.

TTPTIP means Tribal Transportation Program Transportation Improvement Program. It is a financially constrained prioritized list of transportation projects and activities eligible for TTP funding covering a period of four years that is developed by BIA and FHWA based on each Tribe's submission of their TTIP or Tribal priority list. It is required for projects and activities to be eligible for funding under title 23 U.S.C. and title 49 U.S.C. chapter 53. The Secretary of Transportation reviews and approves the TTPTIP and distributes copies to each State for inclusion in their respective STIPs without further action.

§ 170.6 Acronyms.

AASHTO—American Association of State Highway and Transportation Officials.

ADR—Alternate dispute resolution

ANCSA—Alaska Native Claims Settlement Act

BIA—Bureau of Indian Affairs, Department of the Interior.

BIADOT—Bureau of Indian Affairs, Indian Services—Division of Transportation—Central Office.

CFR—Code of Federal Regulations.

DOI—Department of the Interior.

DOT—Department of Transportation.

FHWA—Federal Highway Administration, Department of Transportation.

FTA—Federal Transit Administration, Department of Transportation.

ISDEAA—Indian Self-Determination and Education Assistance Act of 1975, Public Law 93–638, as amended.

LRTP—Long-range transportation plan.

MUTCD—Manual of Uniform Traffic Safety Devices

NBTI—National Bridge and Tunnel Inventory.

NEPA—National Environmental Policy Act

NTTFI—National Tribal Transportation Facility Inventory.

PM&O—Program management and oversight.

PS&E—Plans, specifications and estimates

STIP—Statewide Transportation Improvement Program.

TTAC—Tribal Technical Assistance Center

TTIP—Tribal Transportation Improvement Program.

TTP—Tribal Transportation Program.

TTP–S—TTP—Safety

TTPTIP—Tribal Transportation Program Transportation Improvement Program.

U.S.C.—United States Code

§ 170.7 Information collection.

The information collection requirements contained in this part have been approved by the Office of Management and Budget under 44 U.S.C. *et seq.* and assigned control number 1076–0161. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. Comments and suggestions on the burden estimate or any other aspect of the information collection should be sent to the Information Collection Clearance Officer, Bureau of Indian Affairs, 1849 C Street NW., Washington, DC 20240.

Subpart B—Tribal Transportation Program Policy and Eligibility

Consultation, Collaboration, Coordination

§ 170.100 What do the terms "consultation," "collaboration," and "coordination" mean?

(a) *Consultation* means government-to-government communication, carried out in accordance with applicable Executive Orders, in a timely manner by all parties about a proposed or contemplated decision. The Departments' Consultation Policies and Plans can be found at *http://www.indianaffairs.gov/WhoWeAre/AS–IA/Consultation/Templates/index.htm* (DOI) or *http://www.fhwa.dot.gov/tribal/news/consultation.htm* (DOT)

(b) *Collaboration* means that all parties involved in carrying out planning and project development work together in a timely manner to achieve a common goal or objective.

(c) *Coordination* means that each party:

(1) Shares and compares in a timely manner its transportation plans, programs, projects, and schedules with the related plans, programs, projects, and schedules of the other parties; and

(2) Adjusts its plans, programs, projects, and schedules to optimize the efficient and consistent delivery of transportation projects and services.

§ 170.101 What is the TTP consultation and coordination policy?

(a) The TTP's government-to-government consultation and coordination policy is to foster and improve communication, cooperation, and coordination among Tribal, Federal, State, and local governments and other transportation organizations when undertaking the following, similar, or related activities:

(1) Identifying data-driven safety needs for improving both vehicle and pedestrian safety;

(2) Developing State, metropolitan, regional, TTP, and TTIPs that impact Tribal lands, communities, and members;

(3) Developing short and long-range transportation plans;

(4) Developing TTP transportation projects;

(5) Developing environmental mitigation measures necessary to protect and/or enhance Tribal lands and the environment, and counteract the impacts of the projects;

(6) Developing plans or projects to carry out the Tribal Transportation Facility Bridge Program identified in 23 U.S.C. 202(d);

(7) Developing plans or projects for disaster and emergency relief response and the repair of eligible damaged TTP transportation facilities;

(8) Assisting in the development of State and Tribal agreements related to the TTP;

(9) Developing and improving transit systems serving Tribal lands and communities;

(10) Assisting in the submission of discretionary grant applications for State and Federal funding for TTP transportation facilities; and

(11) Developing plans and projects for the safety funding identified in 23 U.S.C. 202(e).

(b) Tribal, State and Federal Government agencies may enter into intergovernmental Memoranda of Agreement to streamline and facilitate consultation, collaboration, and coordination.

(c) DOI and DOT operate within a government-to-government relationship with Tribes. As a critical element of this relationship, these agencies assess the impact of Federal transportation policies, plans, projects, and programs on Tribal rights and interests to ensure that these rights and concerns are appropriately considered.

§ 170.102 What goals and principles guide program implementation?

When undertaking transportation activities affecting Tribes, the Secretaries should, to the maximum extent permitted by law:

(a) Establish regular and meaningful consultation and collaboration with affected Tribal governments, including facilitating the direct involvement of Tribal governments in short- and long-range Federal transportation planning efforts;

(b) Promote the rights of Tribal governments to govern their own internal affairs;

(c) Promote the rights of Tribal governments to receive direct transportation services from the Federal Government or to enter into agreements to directly operate any Tribally related transportation programs serving Tribal members;

(d) Ensure the continuation of the trust responsibility of the United States to Tribes and Indian individuals;

(e) Reduce the imposition of unfunded mandates upon Tribal governments;

(f) Encourage flexibility, innovation and implementation of contracting mechanisms used for delivery of the TTP to the greatest extent authorized by Congress by providing the protections afforded by the ISDEAA to Tribes carrying out eligible activities of the TTP;

(g) Reduce, streamline, and eliminate unnecessarily restrictive transportation policies, guidelines, or procedures;

(h) Ensure that Tribal rights and interests are appropriately considered during program development;

(i) Ensure that the TTP is implemented consistent with Tribal sovereignty and the government-to-government relationship; and

(j) Consult with, and solicit the participation of, Tribes in the development of the annual BIA budget proposals.

§ 170.103 Is consultation with Tribal governments required before obligating TTP funds for direct service activities?

Yes. Consultation with Tribal governments is required before obligating TTP funds for direct service activities. Before obligating TTP funds on any project for direct service activities, the Secretary must:

(a) Consult with the affected Tribe to determine Tribal preferences concerning the program, project, or activity; and

(b) Provide information under § 170.600 within 30 days of the notice of availability of funds.

§ 170.104 Are funds available for consultation, collaboration, and coordination activities?

Yes. Funds are available for consultation, collaboration, and coordination activities. To fund consultation, collaboration, and coordination of TTP activities, Tribes may use:

(a) The Tribes' TTP allocations;

(b) Tribal Priority Allocation funds;

(c) Administration for Native Americans funds;

(d) Economic Development Administration funds;

(e) United States Department of Agriculture Rural Development funds;

(f) Community Development Block Grant funds;

(g) Indian Housing Block Grant funds;

(h) Indian Health Service Tribal Management Grant funds;

(i) General funds of the Tribal government; and

(j) Any other funds available for the purpose of consultation, collaboration, and coordination activities.

§ 170.105 When must State governments consult with Tribes?

As identified in 23 U.S.C. 134 and 135, States will develop their STIP in consultation with Tribes in the area where the project is located. This includes providing for a process that coordinates transportation planning efforts carried out by the State with similar efforts carried out by Tribes. Regulations governing STIPs can be found at 23 CFR part 450.

§ 170.106 Should planning organizations and local governments consult with Tribes when planning for transportation projects?

Yes. When planning for transportation projects, planning organizations and local governments should consult with Tribes in the area where the project is located.

§ 170.107 Should Tribes and BIA consult with planning organizations and local governments in developing projects?

Yes. Tribes and BIA should consult with planning organizations and local governments in developing projects.

(a) All regionally significant TTP projects must be:

(1) Developed in cooperation with State and metropolitan planning organizations; and

(2) Included in a FHWA-approved TTPTIP for inclusion in State and metropolitan plans.

(b) BIA and Tribes are encouraged to consult with States, metropolitan and regional planning organizations, and local and municipal governments on transportation matters of common concern.

§ 170.108 How do the Secretaries prevent discrimination or adverse impacts?

The Secretaries ensure that non-discrimination and environmental justice principles are integral TTP program elements. The Secretaries consult with Tribes early in the program development process to identify potential discrimination and to recommend corrective actions to avoid disproportionately high and adverse effects on Tribes and Indian populations.

§ 170.109 How can State and local governments prevent discrimination or adverse impacts?

(a) Under 23 U.S.C. 134 and 135, and 23 CFR part 450, State and local government officials shall consult and work with Tribes in the development of programs to:

(1) Identify potential discrimination; and

(2) Recommend corrective actions to avoid disproportionately high and adverse effects on Tribes and Indian populations.

(b) Examples of adverse effects include, but are not limited to:

(1) Impeding access to Tribal communities or activities;

(2) Creating excessive access to culturally or religiously sensitive areas;

(3) Negatively affecting natural resources, trust resources, Tribal businesses, religious, and cultural sites;

(4) Harming indigenous plants and animals; and

(5) Impairing the ability of Tribal members to engage in commercial, cultural, and religious activities.

§ 170.110 What if discrimination or adverse impacts occur?

If discrimination or adverse impacts occur, a Tribe should take the following steps in the order listed:

(a) Take reasonable steps to resolve the problem directly with the State or local government involved; and

(b) Contact BIA, FHWA, or the Federal Transit Authority (FTA), as appropriate, to report the problem and seek assistance in resolving the problem.

Eligible Uses of TTP Funds

§ 170.111 What activities may be carried out using TTP funds?

TTP funds will be used to pay the cost of items identified in 23 U.S.C. 202(a)(1). A more detailed list of eligible activities is available in the appendix A to this subpart. Each of the items identified in this appendix must be interpreted in a manner that permits, rather than prohibits, a proposed use of funds.

§ 170.112 What activities are not eligible for TTP funding?

TTP funds cannot be used for any of the following:

(a) Structures and erosion protection unrelated to transportation and roadways;

(b) General or Tribal planning not involving transportation;

(c) Landscaping and irrigation systems not involving transportation programs and projects;

(d) Work or activities that are not listed on an FHWA-approved TTPTIP;

(e) Condemnation of land for recreational trails;

(f) Salaries and/or other incidental costs of any Federal employee or contractor not performing Federal TTP stewardship and oversight, work identified in the appendix to subpart E, or project-related activities identified on an approved TTIP; or

(g) Direct and/or incidental costs associated with the Federal Government's acquisition of goods, services, or construction unrelated to the program.

§ 170.113 How can a Tribe determine whether a new use of funds is allowable?

(a) A Tribe that proposes new uses of TTP funds must ask BIA or FHWA in writing whether the proposed use is eligible under Federal law.

(1) In cases involving eligibility questions that refer to 25 U.S.C., BIA will determine whether the new proposed use of TTP funds is allowable and provide a written response to the requesting Tribe within 45 days of receiving the written inquiry. Tribes may appeal a denial of a proposed use by BIA under 25 CFR part 2. The address is: Department of the Interior, BIA, Division of Transportation, 1849 C Street NW., MS 4513 MIB, Washington, DC 20240.

(2) In cases involving eligibility questions that refer to the TTP or 23 U.S.C., BIA will refer an inquiry to FHWA for decision. FHWA must provide a written response to the requesting Tribe within 45 days of receiving the written inquiry from the Tribe. Tribes may appeal denials of a proposed use by the FHWA to: FHWA, 1200 New Jersey Ave. SE., Washington, DC 20590.

(b) To the extent practical, the deciding agency must consult with the TTP Coordinating Committee before denying a request.

(c) BIA and FHWA will:

(1) Send copies of all eligibility determinations to the TTP Coordinating Committee and BIA Regional offices;

(2) Coordinate all responses and if the requested agency fails to issue a decision to the requesting Tribe within the required time, the proposed use will be deemed to be allowable for that specific project; and

(3) Promptly make any final determination available on agency Web sites.

Use of TTP and Cultural Site or Area Entry Roads

§ 170.114 What restrictions apply to the use of a Tribal transportation facility?

(a) All Tribal transportation facilities listed in the approved NTTFI must be

open and available for public use as required by 23 U.S.C. 101(a)(31). However, the public authority having jurisdiction over these roads or the Secretary, in consultation with a Tribe and applicable private landowners, may restrict road use or close roads temporarily when:

(1) Required for public health and safety or as provided in § 170.116.

(2) Conducting engineering and traffic analysis to determine maximum speed limits, maximum vehicular size, and weight limits, and identify needed traffic control devices; and

(3) Erecting, maintaining, and enforcing compliance with signs and pavement markings.

(b) Consultation is not required whenever the conditions in paragraph (a) of this section involve immediate safety or life-threatening situations.

(c) A Tribal transportation facility owned by a Tribe or BIA may be permanently closed only when the Tribal government and the Secretary agree. Once this agreement is reached, BIA must remove the facility from the NTTFI and it will be ineligible for expenditure of any TTP funds.

§ 170.115 What is a cultural site or area entry road?

(a) A cultural site or area entry road is a public road that provides access to sites for cultural purposes as defined by Tribal traditions, which may include, for example:

(1) Sacred and medicinal sites;

(2) Gathering medicines or materials such as grasses for basket weaving; and

(3) Other traditional activities, including, but not limited to, subsistence hunting, fishing and gathering.

(b) A Tribal government may unilaterally designate a Tribal road as a cultural site or area entry road. A cultural site or area entry road designation is an entirely voluntary and internal decision made by the Tribe to help it and other public authorities manage, protect, and preserve access to locations that have cultural significance.

(c) In order for a Tribal government to designate a non-tribal road as a cultural site or area entry road, it must enter into an agreement with the public authority having jurisdiction over the road.

(d) Cultural site or area entry roads may be included in the NTTFI if they meet the definition of a TTP facility.

§ 170.116 Can a Tribe close a cultural site or area entry road?

(a) A Tribe with jurisdiction over a cultural site or area entry road can close it. The Tribe can carry this out:

(1) During periods when the Tribe or Tribal members are involved in cultural activities; and

(2) In order to protect the health and safety of the Tribal members or the general public.

(b) Cultural site or area entry roads designated through an agreement with a public authority may only be closed according to the provisions of the agreement. See § 170.115(c).

Seasonal Transportation Routes

§ 170.117 Can TTP funds be used on seasonal transportation routes?

Yes. A Tribe may use TTP funds on seasonal transportation routes that are included in the NTTFI.

(a) Information regarding the standards for seasonal transportation routes are found in § 170.454. A Tribe can also develop or adopt standards that are equal to or exceed these standards.

(b) To help ensure the safety of the traveling public, construction of a seasonal transportation route requires a right-of-way, easement, or use permit.

TTP Housing Site or Area Entry Roads

§ 170.118 What terms apply to TTP housing site or area entry roads?

(a) *TTP housing site or area entry road* means a public road on the TTP System that provides access to a housing cluster.

(b) *TTP housing street* means a public road on the TTP System that is located within a housing cluster.

(c) *Housing cluster* means three or more existing or proposed housing units.

§ 170.119 Are housing site or area entry roads and housing streets eligible for TTP funding?

Yes. TTP housing site or area entry roads and housing streets on public rights-of-way are eligible for construction, reconstruction, and rehabilitation funding under the TTP. Tribes, following the transportation planning process as required in subpart D, may include housing site or area entry roads and housing street projects on their TTIP.

Toll, Ferry, and Airport Facilities

§ 170.120 How can Tribes use Federal highway funds for toll and ferry facilities?

(a) A Tribe can use Federal-aid highway funds, including TTP funds, to study, design, construct, and operate toll highways, bridges, and tunnels, as well as ferry boats and ferry terminal facilities. The following table shows how a Tribe can initiate construction of these facilities.

To initiate construction of a . . .	A Tribe must . . .
(1) Toll highway, bridge, or tunnel.	(i) Meet and follow the requirements in 23 U.S.C. 129; and (ii) If TTP funds are used, enter into an Agreement as defined in § 170.5.
(2) Ferry boat or ferry terminal.	Meet and follow the requirements in 23 U.S.C. 129(c).

(b) A Tribe can use TTP funds to fund 100 percent of the conversion or construction of a toll facility.

(c) If a Tribe obtains non-TTP Federal funding for the conversion or construction of a toll facility, the Tribe may use TTP funds to satisfy any matching fund requirements.

§ 170.121 Where is information about designing and operating a toll facility available?

Information on designing and operating a toll highway, bridge or tunnel is available from the International Bridge, Tunnel and Turnpike Association. The Association publishes a variety of reports, statistics, and analyses. The Web site is located at *http://www.ibtta.org.* Information is also available from FHWA.

§ 170.122 When can a Tribe use TTP funds for airport facilities?

(a) A Tribe can use TTP funds for construction of airport and heliport access roads, if the access roads are open to the public.

(b) A Tribe cannot use TTP funds to construct, improve, or maintain airport or heliport facilities.

Recreation, Tourism, and Trails

§ 170.123 Can a Tribe use Federal funds for its recreation, tourism, and trails program?

Yes. A Tribe, Consortium, or the BIA may use TTP funds for recreation, tourism, and trails programs if the programs are included in the TTPTIP. Additionally, the following Federal programs may be possible sources of Federal funding for recreation, tourism, and trails projects and activities:

(a) Federal Lands Access Program (23 U.S.C. 204);

(b) National Highway Performance Program (23 U.S.C. 119);

(c) Transportation Alternatives (23 U.S.C. 213);

(d) Surface Transportation Program (23 U.S.C. 133);

(e) Other funding from other Federal departments; and

(f) Other funding that Congress may authorize and appropriate.

§ 170.124 How can a Tribe obtain funds?

(a) To receive funding for programs that serve recreation, tourism, and trails goals, a Tribe should:

(1) Identify a program meeting the eligibility guidelines for the funds and have it ready for development; and

(2) Have a viable project ready for improvement or construction, including necessary permits.

(b) Tribes seeking to obtain funding from a State under the programs identified in § 170.123(b) through (f) should contact the State directly to determine eligibility, contracting opportunities, funding mechanisms, and project administration requirements. These funds would be made available as provided by § 170.627 of this part.

(c) In order to expend any Federal transportation funds, a Tribe must ensure that the eligible project/program is listed on an FHWA-approved TIP or STIP.

§ 170.125 What types of activities can a recreation, tourism, and trails program include?

(a) The following are examples of activities that Tribes and Consortiums may include in a recreation, tourism, and trails program:

(1) Transportation planning for tourism and recreation travel;

(2) Adjacent public vehicle parking areas;

(3) Development of tourist information and interpretative signs;

(4) Provision for non-motorized trail activities including pedestrians and bicycles;

(5) Provision for motorized trail activities including all-terrain vehicles, motorcycles, snowmobiles, etc.;

(6) Construction improvements that enhance and promote safe travel on trails;

(7) Safety and educational activities;

(8) Maintenance and restoration of existing recreational trails;

(9) Development and rehabilitation of trailside and trailhead facilities and trail linkage for recreational trails;

(10) Purchase and lease of recreational trail construction and maintenance equipment;

(11) Safety considerations for trail intersections;

(12) Landscaping and scenic enhancement (see 23 U.S.C. 319);

(13) Bicycle transportation and pedestrian walkways (see 23 U.S.C. 217); and

(14) Trail access roads.

(b) The items listed in paragraph (a) of this section are not the only activities that are eligible for recreation, tourism, and trails funding. The funding criteria may vary with the specific requirements of the programs.

(c) Tribes may use TTP funds for any activity that is eligible for Federal funding under any provision of title 23 of the U.S.C.

§ 170.126 Can roads be built in roadless and wild areas?

Under 25 CFR part 265, no roads can be built in an area designated as a roadless and wild area.

TTP Safety

§ 170.127 What are the TTP Safety Funds?

(a) Funds, identified as TTP Safety (TTP–S) funds, are made available for a Tribe's highway safety activities through a TTP set-aside established in 23 U.S.C. 202(e). TTP–S funds are allocated based on identification and analysis of highway safety issues and opportunities on Tribal lands. A TTP–S call for projects will be made annually through a Notice of Funding Opportunity published in the **Federal Register**.

(b) Tribes may also use their TTP–S funds made available through 23 U.S.C. 202(b) for highway safety activities as well as seek grant and program funding from appropriate State and local agencies and private grant organizations.

(c) A project that uses TTP–S funding or TTP funds made available under 23 U.S.C. 202(b) must be identified on a FHWA-approved TTPTIP before any funds are expended.

§ 170.128 What activities are eligible for TTP–S funds?

(a) TTP–S funds made available under 23 U.S.C. 202(e) may be used for projects and activities that improve safety in one or more of the following categories:

(1) Safety Plans and Planning activities; and

(2) Other eligible activities as described in 23 U.S.C. 148(a)(4)

(b) Eligible activities for each of the categories listed in paragraph (a) of this section will be included in the annual Notice of Funding Opportunity. An eligibility determination for other proposed activities must be requested from BIA or FHWA under § 170.113.

§ 170.129 How will Tribes receive TTP–S funds?

TTP–S funds made available to Tribes may be included in the Tribe's self-determination contracts, self-governance agreements, program agreements, and other appropriate agreements.

§ 170.130 How can Tribes obtain non-TTP funds for highway safety projects?

FHWA, the National Highway Traffic Safety Administration, BIA, the U.S. Department of Health and Human Services and other Federal agencies may have funding available for Tribes to address safety projects and activities. Please see the respective agency/department Web sites for further information or ask BIA or FHWA for assistance. If funding from these agencies does become available, Tribes may work with BIA or FHWA to include those funds through an ISDEAA contract or agreement, or other appropriate agreement for these projects. If the funding is title 23 funding that is originally made available to a State, the Tribe will need to work with the State to develop an agreement for the funding and work through the process identified in § 170.627 of this part.

Transit Facilities

§ 170.131 How do Tribes identify transit needs?

Tribes identify transit needs during the Tribal transportation planning process (see subpart D of this part). Transit projects using TTP funds must be included in the FHWA-approved TTPTIP.

§ 170.132 What Federal funds are available for a Tribe's transit program?

Title 23 U.S.C. authorizes use of TTP funds for transit facilities as defined in this part. There are many additional sources of Federal funds for Tribal transit programs, including the Federal programs listed in this section. Note that each program has its own terms and conditions of assistance. For further information on these programs and their use for transit, contact the FTA Regional Transit Assistance Program at *www.nationalrtap.org.* Section 170.627 of this part identifies how these funds, if provided to the Tribe from a State or county, can be made available.

(a) *Department of Transportation.* Formula Grants for Public Transportation on Indian Reservations under 49 U.S.C. 5311, Welfare-to-Work, Tribal Transportation Program, transportation and community and systems preservation, Federal transit capital improvement grants, public transportation for non-urbanized areas, capital assistance for elderly and disabilities transportation, education, and Even Start.

(b) *Department of Agriculture.* Community facilities loans; rural development loans; business and industrial loans; rural enterprise grants; commerce, public works and economic development grants; and economic adjustment assistance.

(c) *Department of Housing and Urban Development.* Community development block grants, supportive housing, Tribal

housing loan guarantees, resident opportunity and support services.

(d) *Department of Labor.* Indian employment and training, welfare-to-work grants.

(e) *Department of Health and Human Services.* Programs for Indian elders, community service block grants, job opportunities for low-income individuals, Head Start (capital or operating), administration for Indian programs, Medicaid, HIV Care Grants, Healthy Start, and the Indian Health Service.

§ 170.133 May a Tribe or BIA use TTP funds as matching funds?

TTP funds may be used to meet matching or cost participation requirements for any Federal or non-Federal transit grant or program.

§ 170.134 What transit facilities and activities are eligible for TTP funding?

Transit facilities and activities eligible for TTP funding include, but are not limited to:

(a) Acquiring, constructing, operating, supervising or inspecting new, used or refurbished equipment, buildings, facilities, buses, vans, water craft, and other vehicles for use in public transportation;

(b) Transit-related intelligent transportation systems;

(c) Rehabilitating, remanufacturing, and overhauling a transit vehicle;

(d) Preventive maintenance;

(e) Leasing transit vehicles, equipment, buildings, and facilities for use in mass transportation;

(f) Third-party contracts for otherwise eligible transit facilities and activities;

(g) Public transportation improvements that enhance economic and community development, such as bus shelters in shopping centers, parking lots, pedestrian improvements, and support facilities that incorporate other community services;

(h) Passenger shelters, bus stop signs, and similar passenger amenities;

(i) Introduction of new public transportation technology;

(j) Provision of fixed route, demand response services, and non-fixed route paratransit transportation services;

(k) Radio and communication equipment to support Tribal transit programs;

(l) Transit; and

(m) Any additional activities authorized by 49 U.S.C. 5311.

TTP Coordinating Committee

§ 170.135 What is the TTP Coordinating Committee?

(a) Under this part, the Secretaries will establish a TTP Coordinating Committee that:

(1) Provides input and recommendations to BIA and FHWA in developing TTP regulations, policies and procedures; and

(2) Supplements government-to-government consultation by coordinating with and obtaining input from Tribes, BIA, and FHWA.

(b) The Committee consists of 24 Tribal regional representatives (two from each BIA Region) and two non-voting Federal representatives (FHWA and BIA).

(c) The Secretary must select the regional Tribal representatives from nominees officially submitted by the region's Tribes.

(1) To the extent possible, the Secretary must make the selection so that there is representation from a broad cross-section of large, medium, and small Tribes.

(2) Tribal nominees must be Tribal governmental officials or Tribal employees with authority to act for their Tribal government.

(d) For purposes of continuity, the Secretary will appoint the Tribal representatives to a three year term. The appointments will be carried out so that only one of a region's two representatives will be appointed in any one year. Should the Tribal appointment or employment of a committee representative terminate during his/her term, the representative must notify the Secretary of this change and his/her membership to the Committee will cease. Upon receipt of the notification, the Secretary will seek nominations from the region's Tribes to replace the representative for the remainder of the term.

(e) Should the need arise, the Secretary will replace representatives.

§ 170.136 What are the TTP Coordinating Committee's responsibilities?

(a) Committee responsibilities are to provide input and recommendations to BIA and FHWA during the development or revision of:

(1) BIA/FHWA TTP Stewardship Plan;

(2) TTP policy and procedures;

(3) TTP eligible activities determination;

(4) TTP transit policy;

(5) TTP regulations;

(6) TTP management systems policy and procedures; and

(7) National Tribal transportation needs.

(b) The Committee may establish work groups to carry out its responsibilities.

(c) The Committee also reviews and provides recommendations on TTP national concerns (including the implementation of this part) brought to its attention.

(d) Committee members are responsible for disseminating TTP Coordinating Committee information and activities to Tribal leadership and transportation officials within their respective BIA Regions.

§ 170.137 How does the TTP Coordinating Committee conduct business?

The Committee holds at least two meetings a year. In order to maximize participation by the Tribal public, the Committee shall submit to the Secretary its proposed meeting dates and locations for each fiscal year no later than October 1st. Subject to approval by the Secretary, additional Committee meetings may be called with the consent of one-third of the Committee members, or by BIA or FHWA. The Committee conducts business at its meetings as follows:

(a) A quorum consists of representation from eight BIA Regions.

(b) The Committee will operate by consensus or majority vote, as determined by the Committee in its protocols.

(c) Any Committee member can submit an agenda item to the Chair.

(d) The Committee will work through a committee-approved annual work plan and budget.

(e) Annually, the Committee must elect from among the Committee membership a Chair, a Vice-Chair, and other officers. These officers will be responsible for preparing for and conducting Committee meetings and summarizing meeting results. These officers will also have other duties that the Committee may prescribe.

(f) The Committee must keep the Secretary and the Tribes informed through an annual accomplishment report provided within 90 days after the end of each fiscal year.

(g) The Committee's budget will be funded through the TTP management and oversight funds, not to exceed $150,000 annually.

Tribal Technical Assistance Centers

§ 170.138 What are Tribal Technical Assistance Centers?

Tribal Technical Assistance Centers (TTAC), which are also referred to as Tribal Technical Assistance Program Centers are authorized under 23 U.S.C. 504(b)(3). The centers assist Tribal governments and other TTP participants in extending their technical capabilities by providing them greater access to transportation technology, training, and research opportunities. Complete information about the centers and the

services they offer is available on at *http://ltap.org/about/ttap.php.*

Appendix A to Subpart B—Allowable Uses of TTP funds

TTP funds must be used to pay the cost of those items identified in 23 U.S.C. 202(a)(1), including:

(a) TTP funds can be used for the following planning and design activities:

(1) Planning and design of Tribal Transportation Facilities.

(2) Transportation planning activities, including planning for tourism and recreational travel.

(3) Development, establishment, and implementation of Tribal transportation management systems such as safety, bridge, pavement, and congestion management.

(4) Tribal transportation plans and transportation improvement programs (TIPS).

(5) Coordinated technology implementation program (CTIP) projects.

(6) Traffic engineering and studies.

(7) Identification, implementation, and evaluation of data-driven safety needs.

(8) Tribal transportation standards.

(9) Preliminary engineering studies.

(10) Interagency program/project formulation, coordination and review.

(11) Environmental studies and archeological investigations directly related to transportation programs and projects.

(12) Costs associated with obtaining permits and/or complying with Tribal, Federal, State, and local environmental, archeological and natural resources regulations and standards.

(13) Development of natural habitat and wetland conservation and mitigation plans, including plans authorized under the Water Resources Development Act of 1990, 104 Stat. 4604 (Water Resources Development Act).

(14) Architectural and landscape engineering services related to transportation programs.

(15) Engineering design related to transportation programs, including permitting activities.

(16) Inspection of bridges and structures.

(17) Tribal Transportation Assistance Centers (TTACs).

(18) Safety planning, programming, studies and activities.

(19) Tribal employment rights ordinance (TERO) fees.

(20) Purchase or lease of advanced technological devices used for transportation planning and design activities such as global positioning units, portable weigh-in-motion systems, hand-held data collection units, related hardware and software, etc.

(21) Planning, design and coordination for Innovative Readiness Training projects.

(22) Transportation planning and project development activities associated with border crossings on or affecting Tribal lands.

(23) Public meetings and public involvement activities associated with transportation projects and planning.

(24) Leasing or rental of equipment used in transportation planning or design programs.

(25) Transportation-related technology transfer activities and programs.

(26) Educational activities related to bicycle safety.

(27) Planning and design of mitigation impacts to environmental resources caused by a transportation project, including, but not limited to, wildlife, habitat, ecosystems, historic properties, and wetlands.

(28) Evaluation of community impacts such as land use, mobility, access, social, safety, psychological, displacement, economic, and aesthetic impacts.

(29) Acquisition of land and interests in land required for right-of-way, including control of access thereto from adjoining lands, the cost of appraisals, cost of surveys, cost of examination and abstract of title, the cost of certificate of title, advertising costs, and any fees incidental to such acquisition.

(30) Cost associated with relocation activities including financial assistance for displaced businesses or persons and other activities as authorized by law.

(31) On-the-job education including classroom instruction and pre-apprentice training activities related to transportation planning and design.

(32) Other eligible activities as approved by FHWA.

(33) Any additional activities identified by TTP Coordinating Committee guidance and approved by the appropriate Secretaries (see § 170.137).

(34) Indirect general and administrative costs; and

(35) Other eligible activities described in this part.

(b) TTP funds can be used for the following construction and improvement activities:

(1) Construction, reconstruction, rehabilitation, resurfacing, restoration, and operational improvements for Tribal transportation facilities.

(2) Construction or improvement of Tribal transportation facilities necessary to accommodate other transportation modes.

(3) Construction of toll roads, highway bridges and tunnels, and toll and non-toll ferry boats and terminal facilities, and approaches thereto (except when on the Interstate System) to the extent permitted under 23 U.S.C. 129.

(4) Construction of projects for the elimination of hazards at railway-highway crossings, including the separation or protection of grades at crossings, the reconstruction of existing railroad grade crossing structures, and the relocation of highways to eliminate grade crossings.

(5) Installation of protective devices at railway-highway crossings.

(6) Transit facilities, whether publicly or privately owned, that serve Indian reservations and other communities or that provide access to or are located within an Indian reservation or community (see §§ 170.131 through 170.134 for additional information).

(7) Engineered pavement overlays that add to the structural value and design life or increase the skid resistance of the pavement.

(8) Tribally-owned, post-secondary vocational school transportation facilities.

(9) Road sealing.

(10) The placement of a double bituminous surface and chip seals during the construction of an approved project (as the non-final course) or that form the final surface of low volume roads.

(11) Seismic retrofit, replacement, rehabilitation, and painting of road bridges.

(12) Application of calcium magnesium acetate, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and de-icing compositions on road bridges, and approaches thereto and other elevated structures.

(13) Installation of scour countermeasures for road bridges and other elevated structures.

(14) Special pedestrian facilities built in lieu of streets or roads, where standard street or road construction is not feasible.

(15) Standard regulatory, warning, guide, and other official traffic signs, including dual language signs, which comply with the MUTCD that are part of transportation projects. TTP funds may also be used on interpretive signs (signs intended for viewing only by pedestrians, bicyclists, and occupants of vehicles parked out of the flow of traffic) that are culturally relevant (native language, symbols, etc.) that are a part of transportation projects.

(16) Traffic barriers and bridge rails.

(17) Engineered spot safety improvements.

(18) Planning and development of rest areas, recreational trails, parking areas, sanitary facilities, water facilities, and other facilities that accommodate the traveling public.

(19) Public approach roads and interchange ramps that meet the definition of a Tribal Transportation Facility.

(20) Construction of roadway lighting and traffic signals.

(21) Adjustment or relocation of utilities directly related to roadway work, not required to be paid for by local utility companies.

(22) Conduits crossing under the roadway to accommodate utilities that are part of future development plans.

(23) Restoration of borrow and gravel pits created by projects funded from the TTP.

(24) Force account and day labor work, including materials and equipment rental, being performed in accordance with approved plans and specifications.

(25) Experimental features where there is a planned monitoring and evaluation schedule.

(26) Capital and operating costs for traffic monitoring, management, and control facilities and programs.

(27) Safely accommodating the passage of vehicular and pedestrian traffic through construction zones.

(28) Construction engineering including contract/project administration, inspection, and testing.

(29) Construction of temporary and permanent erosion control, including landscaping and seeding of cuts and embankments.

(30) Landscape and roadside development features.

(31) Marine facilities and terminals as intermodal linkages.

(32) Construction of visitor information centers, kiosks, and related items.

(33) Other appropriate public road facilities such as visitor centers as

determined by the Secretary of Transportation.

(34) Facilities adjacent to roadways to separate pedestrians and bicyclists from vehicular traffic for operational safety purposes, or special trails on separate rights-of-way.

(35) Construction of pedestrian walkways and bicycle transportation facilities, such as a new or improved lane, path, or shoulder for use by bicyclists and a traffic control device, shelter, or parking facility for bicycles.

(36) Facilities adjacent to roadways to separate modes of traffic for safety purposes.

(37) Acquisition of scenic easements and scenic or historic sites provided they are part of an approved project or projects.

(38) Debt service on bonds or other debt financing instruments issued to finance TTP construction and project support activities.

(39) Any project to encourage the use of carpools and vanpools, including provision of carpooling opportunities to the elderly and individuals with disabilities, systems for locating potential riders and informing them of carpool opportunities, acquiring vehicles for carpool use, designating existing highway lanes as preferential carpool highway lanes, providing related traffic control devices, and designating existing facilities for use for preferential parking for carpools.

(40) Fringe and corridor parking facilities including access roads, buildings, structures, equipment improvements, and interests in land.

(41) Adjacent public parking areas.

(42) Costs associated with obtaining permits and/or complying with Tribal, Federal, State, and local environmental, archeological, and natural resources regulations and standards on TTP projects.

(43) Seasonal transportation routes, including snowmobile trails, ice roads, overland winter roads, and trail markings. (See § 170.117.)

(44) Tribal fees such as employment taxes (TERO), assessments, licensing fees, permits, and other regulatory fees.

(45) On-the-job education including classroom instruction and pre-apprentice training activities related to TTP construction projects such as equipment operations, surveying, construction monitoring, testing, inspection and project management.

(46) Installation of advance technological devices on TTP transportation facilities such as permanent weigh-in-motion systems, informational signs, intelligent transportation system hardware, etc.

(47) Cultural and environmental resource monitoring, management, and mitigation for transportation related activities

(48) Mitigation activities required by Tribal, State, or Federal regulatory agencies and 42 U.S.C. 4321, *et seq.,* the National Environmental Policy Act (NEPA).

(49) Purchasing, leasing or renting of construction or maintenance equipment. All equipment purchase request submittals must be accompanied by written cost analysis and approved by FHWA or BIA. When purchasing construction or maintenance equipment, a Tribe must:

(i) Construction—Develop a lease/purchase cost analysis that identifies the overall benefit of purchasing the piece of equipment versus leasing. This analysis must be submitted to BIA or FHWA for approval per § 170.113. If approved, the funding must be identified on a FHWA-approved TTIP in order to be expended in accordance with 23 U.S.C. 202(b)(4)(B).

(ii) Maintenance—The equipment costs are considered part of the funding identified in 23 U.S.C. 202(a)(8) and must be identified on a FHWA-approved TTIP in accordance with 23 U.S.C. 202(b)(4)(B) in order to be expended.

(50) Coordination and construction materials for innovative readiness training projects operated by entities such as the Department of Defense (DOD), the American Red Cross, the Federal Emergency Management Agency (FEMA), other cooperating Federal agencies, States and their political subdivisions, Tribal governments, or other appropriate non-governmental organizations.

(51) Emergency repairs on Tribal Transportation Facilities.

(52) Public meetings and public involvement activities.

(53) Construction of roads on dams and levees.

(54) Transportation alternative activities as defined in 23 U.S.C. 101(a).

(55) Modification of public sidewalks adjacent to or within Tribal transportation facilities.

(56) Highway and transit safety infrastructure improvements and hazard eliminations.

(57) Transportation control measures such as employer-based transportation management plans, including incentives, shared-ride services, employer sponsored programs to permit flexible work schedules and other activities, other than clause (xvi) listed in section 108(f)(1)(A) of the Clean Air Act, (42 U.S.C. 7408(f)(1)(A)).

(58) Environmental restoration and pollution abatement activities in order to construct a transportation project or to mitigate impacts caused by a transportation project.

(59) Trail development and related activities as identified in §§ 170.123 through 170.126.

(60) Development of scenic overlooks and information centers.

(61) Natural habitat and wetlands mitigation efforts related to TTP projects, including:

(i) Participation in natural habitat and wetland mitigation banks, including banks authorized under the Water Resources Development Act, and

(ii) Contributions to Tribal, statewide and regional efforts to conserve, restore, enhance, and create natural habitats and wetland, including efforts authorized under the Water Resources Development Act.

(62) Mitigation of damage to wildlife, habitat and ecosystems caused as a result of a transportation project.

(63) Construction of permanent fixed or moveable structures for snow or sand control.

(64) Cultural access roads (see § 170.115).

(65) Other eligible items as approved by the Federal Highway Administration (FHWA).

(66) Any additional activities proposed by a Tribe or the TTP Coordinating Committee and approved by the appropriate Secretaries (see §§ 170.113 and 170.136).

(67) Other eligible activities identified in this part (c) TTP funds can be used for maintenance activities as defined in subpart G of this regulation.

(d) Each of the items identified in this appendix must be interpreted in a manner that permits, rather than prohibits, a proposed use of funds.

Appendix B to Subpart B—Sources of Tribal Transportation Training and Education Opportunities

The following is a list of some of the many governmental sources for Tribal transportation training and education opportunities. There may be other non-governmental, Tribal, or private sources not listed here.

(1) National Highway Institute training courses and fellowships

(2) State and local technical assistance center workshops

(3) Tribal technical assistance centers (TTAC) workshops

(4) FHWA and FTA Research Fellowships

(5) Dwight David Eisenhower Transportation Fellowship (23 U.S.C. 504)

(6) Intergovernmental personnel agreement assignments

(7) BIA transportation cooperative education program

(8) BIA force account operations

(9) Federal Transit Administration workshops

(10) State Departments of Transportation

(11) Federal-aid highway construction and technology training including skill improvement programs under 23 U.S.C. 140(b) and (c)

(12) Other funding sources identified in § 170.150 (Transit)

(13) Department of Labor work force development

(14) Indian Employment, Training, and Related Services Demonstration Act, Public Law 102–477

(15) Garrett Morgan Scholarship (FHWA)

(16) NTRC—National Transit Resource Center

(17) CTER—Council for Tribal Employment Rights

(18) BIA Indian Highway Safety Program

(19) FHWA/STIPDG (Summer Transportation Internship Program for Diverse Groups) and NSTISS (National Summer Transportation Institute for Secondary Students) Student Internship Programs

(20) Environmental Protection Agency (EPA)

(21) Department of Commerce (DOC)

(22) Department of Housing and Urban Development Community Planning and Development

(23) Training program for bridge and tunnel inspectors

(24) Transportation Research Board (TRB)

Subpart C—Tribal Transportation Program Funding

§ 170.200 How do BIA and FHWA determine the TTP funding amount?

23 U.S.C. 202(b)(3)(A) provides the basis for the funding formula and its transition into use. The annual TTP funding amount available for distribution is determined as follows:

(a) The following set-asides are applied to the Tribal transportation program before the determination of final Tribal shares:

(1) Tribal transportation planning (23 U.S.C. 202(c));

(2) Tribal transportation facility bridges (23 U.S.C. 202(d));

(3) Tribal safety (23 U.S.C 202(e));

(4) Administrative expenses (23 U.S.C 202(a)(6)); and

(5) Tribal supplemental program (23 U.S.C. 202(b)(3)(C)).

(b) After deducting the set asides identified in paragraph (a) of this section, on October 1 of each fiscal year, the Secretaries will distribute the remainder authorized to be appropriated for the TTP among Indian Tribes as follows:

(1) For fiscal year 2016 and thereafter:

(i) For each Indian Tribe, 20 percent of the total relative need distribution factor and population adjustment factor as determined by the Tribal Transportation Allocation Methodology (see 25 CFR 170 dated July 19, 2004)) for the fiscal year 2011 funding amount made available to that Indian Tribe; and

(ii) The remainder using Tribal shares as described in § 170.201 and Tribal supplemental funding as described in § 170.202.

(2) [Reserved].

§ 170.201 What is the statutory distribution formula for Tribal shares?

(a) Tribal shares are determined by using the NTTFI as calculated for fiscal year 2012, and the most recent data on American Indian and Alaska Native population within each Indian Tribe's American Indian/Alaska Native Reservation or Statistical Area, as computed under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*), in the following manner:

(1) 27 percent in the ratio that the total eligible road mileage in each Tribe bears to the total eligible road mileage of all American Indians and Alaskan Natives. For the purposes of this calculation, eligible road mileage will be computed using only facilities included in the inventory described below:

(i) Were included in the BIA System Inventory prior to October 1, 2004;

(ii) Are owned by an Indian Tribal government;

(iii) Are owned by the Bureau of Indian Affairs.

(2) 39 percent in the ratio that the total population in each Tribe bears to the total population of all American Indians and Alaskan Natives; and

(3) 34 percent will be initially divided equally among each BIA Region.

(b) The share of funds will be distributed to each Indian Tribe within the BIA Region in the ratio that the average total relative need distribution factors and population adjustment factors from fiscal years 2005 through 2011 for a Tribe bears to the average total of relative need distribution factors and population adjustment factors for fiscal years 2005 through 2011 in that region.

§ 170.202 How do BIA and FHWA determine and distribute the Tribal supplemental program funds?

(a) The total amount of funding made available for the Tribal supplemental program is determined as follows:

(1) If the amount made available for the TTP is less than or equal to $275,000,000, the Tribal supplemental funding amount will equal 30 percent of such amount.

(2) If the amount made available for the TTP exceeds $275,000,000, the Tribal supplemental funding will equal:

(i) $82,500,000; plus

(ii) 12.5 percent of the amount made available for the Tribal transportation program in excess of $275,000,000.

(b) The Tribal supplemental program funds will be distributed as follows:

(1) Initially, the Tribal supplemental program funding determined in paragraph (a) of this section will be designated among the BIA Regions in proportion to the regional total of Tribal shares based on the cumulative Tribal shares of all Indian Tribes within the region under § 170.201.

(2) After paragraph (b)(1) of this section is completed, the Tribal supplemental program funding designated for each region will be distributed among the Tribes within the region as follows:

(i) The Secretaries will determine which Tribes would be entitled under § 170.200 to receive in a fiscal year less funding than they would receive in fiscal year 2011 pursuant to the relative need distribution factor and population adjustment factor, as described in 25 CFR part 170, subpart C (in effect as of July 5, 2012); and

(ii) The combined amount that such Indian Tribes would be entitled to receive in fiscal year 2011 pursuant to such relative need distribution factor and population adjustment factor in excess of the amount that they would be entitled to receive in the fiscal year under § 170.200.

(c) Subject to paragraph (d) of this section, the Secretaries will distribute a combined amount to each Tribe that meets the criteria described in paragraph (b)(2)(i) of this section a share of funding in proportion to the share of the combined amount determined under paragraph (b)(2)(ii) of this section attributable to such Indian Tribe.

(d) A Tribe may not receive under paragraph (b)(2) of this section and based on its Tribal share under § 170.200 a combined amount that exceeds the amount that such Indian Tribe would be entitled to receive in fiscal year 2011 pursuant to the relative need distribution factor and population adjustment factor, as described in 25 CFR part 170, subpart C.

(e) If the amount made available for a region under paragraph (b)(1) of this section exceeds the amount distributed among Indian Tribes within that region under paragraph (b)(2) of this section, The Secretaries will distribute the remainder of such region's funding under paragraph (b)(1) of this section among all Tribes in that region in proportion to the combined amount that each such Tribe received under § 170.200 and paragraphs (b), (c), and (d) of this section.

§ 170.203 How are Tribal transportation planning funds provided to Tribes?

Tribal transportation planning funds described in § 170.200(a)(1) are calculated pro rata to each Tribe's final percentage as determined under §§ 170.200 through 170.202. Upon request of a Tribal government and approval by the BIA Regional Office or FHWA, these funds are made available to the Tribes under applicable BIA and FHWA contracting procedures.

§ 170.204 What restrictions apply to TTP funds provided to Tribes?

All TTP funds provided to Tribes can be expended only on eligible projects and activities identified in § 170.111 and included in an FHWA-approved TIP per 23 U.S.C. 202(b)(4)(B).

§ 170.205 What is the timeframe for distributing TTP funds?

Not later than 30 days after the date on which funds are made available to the Secretary under this paragraph, the funds shall be distributed to, and made available for immediate use by, eligible Indian Tribes, in accordance with the formula for distribution of funds under the TTP. (See 23 U.S.C. 202(b)(4)(A).)

Formula Data Appeals

§ 170.226 How can a Tribe appeal its share calculation?

(a) In calculating Tribal shares, BIA and FHWA use population data (which may be appealed) and specific prior-year data (which may not be appealed). Share calculations are based upon the requirements of 23 U.S.C. 202(b)(3)(B).

(b) Any appeal of a Tribe's population figure must be directed to Department of Housing and Urban Development, Indian Housing Office of Native American Programs. The population data used is the most recent data on American Indian and Alaska Native population within each Indian Tribe's American Indian/Alaska Native Reservation or Statistical Area. This data is computed under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*).

(c) Appeal processes regarding inventory submissions are found at § 170.444(c), design standards at § 170.457, and new uses of funds at § 170.113.

Flexible Financing

§ 170.227 Can Tribes use flexible financing for TTP projects?

Yes. Tribes may use flexible financing in the same manner as States to finance TTP transportation projects, unless otherwise prohibited by law.

(a) Tribes may issue bonds or enter into other debt-financing instruments under 23 U.S.C. 122 with the expectation of payment of TTP funds to satisfy the instruments.

(b) Under 23 U.S.C. 603, the Secretary of Transportation may enter into an agreement for secured loans or lines of credit for TTP projects meeting the requirements contained in 23 U.S.C. 602. The secured loans or lines of credit must be paid from tolls, user fees, payments owing to the obligor under a public-private partnership or other dedicated revenue sources.

(c) Tribes may use TTP funds as collateral for loans or bonds to finance TTP projects. Upon the request of a Tribe, a BIA region or FHWA will provide necessary documentation to banks and other financial institutions.

§ 170.228 Can a Tribe use TTP funds to leverage other funds or to pay back loans?

(a) A Tribe can use TTP funds to leverage other funds.

(b) A Tribe can use TTP funds to pay back loans or other finance instruments (including those provided through an agreement with another Tribe) that were used for a project that:

(1) The Tribe paid for in advance of the current year using non-TTP funds;

(2) Was included in FHWA-approved TTPTIP; and

(3) Was included in the NTTFI at the time of construction.

§ 170.229 Can a Tribe apply for loans or credit from a State infrastructure bank?

Yes. A Tribe can apply for loans or credit from a State infrastructure bank. Upon the request of a Tribe, BIA region or FHWA will provide necessary documentation to a State infrastructure bank to facilitate obtaining loans and other forms of credit for a TTP project.

§ 170.230 How long must a project financed through flexible financing remain on a TTPTIP?

Tribes must identify each TTP project financed through flexible financing along with the repayment amount on their annual TTPTIP until the flexible financing instrument has been satisfied.

TTP Data Reporting

§ 170.240 What TTP project and activity data must be submitted annually to the Secretaries?

(a) In accordance with 23 U.S.C. 201(c)(6)(C), no later than 90 days after the last day of each fiscal year, any entity carrying out a project under the TTP under 23 U.S.C. 202 shall submit to the Secretaries, based on obligations and expenditures under the TTP during the preceding fiscal year, the following data:

(1) The names of projects and activities carried out by the entity under the TTP during the preceding fiscal year.

(2) A description of the projects and activities identified under paragraph (1) of this section;

(3) The current status of the projects and activities identified under paragraph (1) of this section; and

(4) An estimate of the number of jobs created and the number of jobs retained by the projects and activities identified under paragraph (1) of this section.

(b) FHWA and BIA shall provide an electronic portal to assist Tribes in submitting the data needed to fulfill the requirements of 23 U.S.C. 201(c)(6)(C).

Subpart D—Planning, Design, and Construction of Tribal Transportation Program Facilities

Transportation Planning

§ 170.400 What is the purpose of transportation planning?

The purpose of transportation planning is to address current and future transportation, land use, economic development, traffic demand, public safety, health, and social needs.

§ 170.401 What are BIA's and FHWA's roles in transportation planning?

Except as provided in § 170.402, the functions and activities that BIA and/or FHWA must perform for the TTP transportation planning are:

(a) Reviewing, and approving the TTPTIP as well as providing technical assistance to the Tribes during the development of their TTIP or Priority List:

(b) Oversight of the NTTFI;

(c) Performing quality assurance and validation of NTTFI data updates as needed;

(d) Coordinating with States and their political subdivisions and appropriate planning authorities on regionally significant TTP projects;

(e) Providing technical assistance to Tribal governments;

(f) Developing TTP budgets;

(g) Facilitating public involvement;

(h) Participating in transportation planning and other transportation-related meetings;

(i) Performing quality assurance and validation related to performing traffic studies;

(j) Performing preliminary project planning or project identification studies;

(k) Conducting special transportation studies;

(l) Developing short- and long-range transportation plans;

(m) Mapping;

(n) Developing and maintaining management systems;

(o) Performing transportation planning for operational and maintenance facilities; and

(p) Researching rights-of-way documents for project planning.

§ 170.402 What is the Tribal role in transportation planning?

(a) All Tribes must prepare a TTIP or Tribal priority list.

(b) Tribes operating with a Program Agreement or BIA self-determination contract, TTP agreement, or self-governance agreement may assume any of the following planning functions:

(1) Coordinating with States and their political subdivisions, and appropriate planning authorities on regionally significant TTP projects;

(2) Preparing NTTFI data updates and ensuring that the data is entered into the NTTFI;

(3) Facilitating public involvement;

(4) Performing traffic studies;

(5) Developing short- and long-range transportation plans;

(6) Mapping;

(7) Developing and maintaining Tribal management systems;

(8) Participating in transportation planning and other transportation related meetings;

(9) Performing transportation planning for operational and maintenance facilities;

(10) Developing TTP budgets including transportation planning cost estimates;

(11) Conducting special transportation studies, as appropriate;

(12) Researching rights-of-way documents for project planning; and

(13) Performing preliminary project planning or project identification studies.

§ 170.403 What TTP funds can be used for transportation planning?

Funds as defined in 23 U.S.C. 202(c) are allocated to an Indian Tribal government to carry out transportation planning. Tribes may also identify transportation planning as a priority use for their TTP Tribal share formula funds. In both cases, the fund source and use must be clearly identified on a FHWA-approved TTPTIP.

§ 170.404 Can Tribes use transportation planning funds for other activities?

Yes. After completion of a Tribe's annual planning activities, unexpended planning funds made available under 23 U.S.C. 202(c) may be used on eligible projects or activities provided that they are identified on a FHWA-approved TTPTIP.

§ 170.405 How must Tribes use planning funds?

TTP funds as defined in 23 U.S.C. 202(c) are available to a Tribal government to support Tribal transportation planning and associated activities, including:

(a) Attending transportation planning meetings;

(b) Pursuing other sources of funds; and

(c) Developing the Tribal priority list, TTIP, LRTP, or any of the transportation planning functions and activities listed in § 170.402.

§§ 170.406–170.408 [Reserved].

§ 170.409 What is the purpose of long-range transportation planning?

(a) The purpose of long-range transportation planning is to clearly demonstrate a Tribe's transportation needs and to develop strategies to meet these needs. These strategies should address future land use, economic development, traffic demand, public safety, and health and social needs. The planning process should result in a LRTP.

(b) The time horizon for a LRTP should be 20 years to match State transportation planning horizons.

§ 170.410 How does a long-range transportation plan relate to the NTTFI?

A LRTP is developed using a uniform process that identifies the transportation needs and priorities of a Tribe. The NTTFI (see § 170.442) is derived from transportation facilities identified through an LRTP. It is also a means for identifying projects and activities for the TTP.

§ 170.411 What should a long-range transportation plan include?

A LRTP should include:

(a) An evaluation of a full range of transportation modes and connections between modes such as highway, rail, air, and water, to meet transportation needs;

(b) Trip generation studies, including determination of traffic generators due to land use;

(c) Social and economic development planning to identify transportation improvements or needs to accommodate existing and proposed land use in a safe and economical fashion;

(d) Measures that address health and safety concerns relating to transportation improvements;

(e) A review of the existing and proposed transportation system to identify the relationships between transportation and the environment;

(f) Cultural preservation planning to identify important issues and develop a transportation plan that is sensitive to Tribal cultural preservation;

(g) Scenic byway and tourism plans;

(h) Measures that address energy conservation considerations;

(i) A prioritized list of short- and long-term transportation needs; and

(j) An analysis of funding alternatives to implement plan recommendations.

§ 170.412 How is the Tribal TTP long-range transportation plan developed and approved?

(a) The Tribal TTP long-range transportation plan is developed by either:

(1) A Tribe working through a self-determination contract, self-governance agreement, Program Agreement; and other appropriate agreement; or

(2) BIA or FHWA upon request of, and in consultation with, a Tribe. The Tribe and BIA or FHWA need to agree on the methodology and elements included in development of the TTP long-range transportation plan along with time frames before work begins. The development of a long-range transportation plan on behalf of a Tribe will be funded from the Tribe's share of the TTP funds.

(b) During the development of the TTP long-range transportation plan, the Tribe and BIA or FHWA will jointly conduct a midpoint review.

(c) The public reviews a draft TTP long-range transportation plan as required by § 170.413. The plan is further refined to address any issues identified during the public review process. The Tribe then approves the TTP long-range transportation plan.

§ 170.413 What is the public's role in developing the long-range transportation plan?

BIA, FHWA, or the Tribe must solicit public involvement. If there are no Tribal policies regarding public involvement, a Tribe must use the procedures in this section. Public involvement begins at the same time long-range transportation planning begins and covers the range of users, from stakeholders and private citizens to major public and private entities. Public involvement must include either meetings or notices, or both.

(a) For public meetings, BIA, FHWA or the Tribe must:

(1) Advertise each public meeting in local and Tribal public newspapers at least 15 days before the meeting date. In the absence of local and Tribal public newspapers, BIA, FHWA, or the Tribe may post notices under locally acceptable practices;

(2) Provide at the meeting copies of the draft LRTP;

(3) Provide information on funding and the planning process; and

(4) Provide the public the opportunity to comment, either orally or in writing.

(b) For public notices, BIA, FHWA, or the Tribe must:

(1) Publish a notice in the local and Tribal public newspapers when the draft LRTP is complete. In the absence of local and Tribal public newspapers, BIA, FHWA, or the Tribe may post notices under locally acceptable practices; and

(2) State in the notice that the LRTP is available for review, where a copy can be obtained, whom to contact for questions, where comments may be submitted, and the deadline for submitting comments (normally 30 days).

§ 170.414 How is the Tribal long-range transportation plan used and updated?

The Tribal government uses its TTP long-range transportation plan to develop transportation projects as documented in a Tribal priority list or TTIP and to identify and justify the Tribe's updates to the NTTFI. To be consistent with State, Metropolitan Planning Organization (MPO) and Regional Planning Organization (RPO) planning practices, the TTP long-range

transportation plan must be reviewed annually and updated at least every five years.

§ 170.415 What are pre-project planning and project identification studies?

(a) Pre-project planning and project identification studies are part of overall transportation planning and include the activities conducted before final project approval on the TTPTIP. These processes provide the information necessary to financially constrain and program a project on the four-year TTPTIP but are not the final determination that projects will be designed and built. These activities include:

(1) Preliminary project cost estimates;

(2) Certification of public involvement;

(3) Consultation and coordination with States and/or MPO's for regionally significant projects;

(4) Preliminary needs assessments; and

(5) Preliminary environmental and archeological reviews.

(b) BIA and/or FHWA, upon request of the Tribe, will work cooperatively with Tribal, State, regional, and metropolitan transportation planning organizations concerning the leveraging of funds from non-TTP sources and identification of other funding sources to expedite the planning, design, and construction of projects on the TTPTIP.

§ 170.420 What is the Tribal priority list?

The Tribal priority list is a list of all transportation projects that the Tribe wants funded. The list:

(a) Is not financially constrained; and

(b) Is provided to BIA or FHWA by official Tribal action, unless the Tribal government submits a TTIP.

Tribal Transportation Improvement Programs

§ 170.421 What is the Tribal Transportation Improvement Program (TTIP)?

(a) The TTIP:

(1) Is developed from and must be consistent with the Tribe's Tribal priority list or LRTP;

(2) Is financially constrained for all identified funding sources;

(3) Must identify (year by year) all TTP funded projects and activities that are expected to be carried out over the next four years as well as the projected costs and all other funding sources that are expected to be used on those projects. Although 23 U.S.C. 134(j)(1)(D) indicates a TIP must be updated once every four years, Tribes are encouraged to update the TTIP annually to best represent the plans of the Tribe;

(4) Must identify all projects and activities that are funded through other Federal, State, county, and municipal transportation funds and are carried out by the Tribe in accordance with 23 U.S.C. 202(a)(9);

(5) Must include public involvement;

(6) Is reviewed and updated as necessary by the Tribal government;

(7) Can be changed only by the Tribal government; and

(8) After approval by the Tribal government, must be forwarded to BIA or FHWA by Tribal resolution or authorized governmental action certifying public involvement has occurred and requesting approval.

(b) A copy of the FHWA-approved TTIP is returned to the Tribe and BIA. Although the FHWA-approved TTIP authorizes the Tribe to expend TTP funds for the projects and/or activities shown, it does not waive or modify other Federal, local, or financial statutory or regulatory requirements associated with the projects or activities.

§ 170.422 How does the public participate in developing the TTIP?

Public involvement is required in the development of the TTIP.

(a) The Tribe must publish a notice in local and/or Tribal newspapers when the draft TTIP is complete. In the absence of local public newspapers, the Tribe or BIA may post notices under locally acceptable practices. The notice must indicate where a copy can be obtained, a contact person for questions, where comments may be submitted, and the deadline for submitting comments. A copy of the notice will be made available to BIA or FHWA upon request.

(b) The Tribe may hold public meetings at which the public may comment orally or in writing.

(c) The Tribe, the State transportation department, or MPO may conduct public involvement activities.

§ 170.423 How are annual updates or amendments to the TTIP conducted?

(a) The TTIP annual update allows:

(1) Changes to schedules and funding amounts for identified projects and activities; and

(2) The addition of transportation projects and activities planned for the next four years.

(b) During the first quarter of a fiscal year, Tribes will be notified of the opportunity to update their TTIP. This notification will contain information on where the Tribes can access their estimated TTP funding amounts for that fiscal year, and will include a copy of their previously approved TTIP, as well as instructions for submitting the annual update.

(c) The Tribe must then review any new transportation planning information and priority lists, update their TTIP using the procedures in § 170.421, and forward the documentation to their respective BIA Regional Office or to FHWA.

(d) If forwarded to:

(1) A BIA Regional Office—The Office will review all submitted information with the Tribe and provide a written response (concurring, denying, or requesting additional information) within 45 days. If the BIA regional office concurs in the TTIP, it is then forwarded to FHWA for final approval.

(2) FHWA–FHWA will review all submitted information with the Tribe and provide a written response (approving, denying, or requesting additional information) within 45 days.

Once a proposed TTIP update is approved by FHWA, it will be included in that year's overall TTPTIP.

(e) The Tribe may amend their approved TTIP at any time using the procedures in § 170.421 and paragraph (d) of this section in order to add a new project or activity within the current fiscal year that they intend to expend TTP funds on.

§ 170.424 What is the TTP Transportation Improvement Program (TTPTIP)?

(a) Each year, FHWA will compile the approved TTIPs for all of the Tribes into one document called the TTPTIP. This document will identify all expected projects and activities over a four-year period and will be organized by fiscal year, State, and Tribe.

(b) FHWA and BIA will post the approved TTPTIP on their respective Web sites. A subset of the TTPTIP that identifies only design and construction activities will annually be provided to the pertinent FHWA Division office for further transmittal to each State Transportation Office/Department for inclusion in the STIP without further action per 23 U.S.C. 201(c)(4).

Public Hearings

§ 170.435 When is a public hearing required?

The Tribe, or BIA or FHWA after consultation with the appropriate Tribe and other involved agencies, determines whether or not a public hearing is needed for a TTPTIP, a LRTP, or a project. A public hearing must be held if a project:

(a) Is for the construction of a new route or facility;

(b) Would significantly change the layout or function of connecting or related roads or streets;

(c) Would cause a substantial adverse effect on adjacent property; or

(d) Is controversial or expected to be controversial in nature.

§ 170.436 How are public hearings for TTP planning and projects funded?

Public hearings for a TTIP or a Tribe's LRTP are funded using the Tribe's funds as described in § 170.403.

§ 170.437 If there is no hearing, how must BIA, FHWA, or a Tribe inform the public?

(a) When no public hearing for a TTP project is scheduled, the BIA, FHWA, or a Tribe must give adequate notice to the public before project activities are scheduled to begin. The notice should include:

(1) Project location;

(2) Type of improvement planned;

(3) Dates and schedule for work;

(4) Name and address where more information is available; and

(5) Provisions for requesting a hearing.

(b) If the work is not to be performed by the Tribe, BIA will send a copy of the notice to the affected Tribe.

§ 170.438 How must BIA, FHWA, or a Tribe inform the public of when a hearing is held?

(a) When BIA, FHWA, or a Tribe holds a hearing under this part, it must notify the public of the hearing by publishing a notice with information about the project, how to attend the hearing, and where copies of documents can be obtained or viewed.

(b) BIA or the Tribe must publish the notice by:

(1) Posting the notice and publishing it in a newspaper of general circulation at least 30 days before the public hearing; and,

(2) Sending a courtesy copy of the notice to each affected Tribe and BIA Regional Office.

(c) A second notice for a hearing is optional.

§ 170.439 How is a public hearing conducted?

(a) *Presiding official.* A Tribal (tribal council) or Federal (FHWA or BIA) official will be appointed to preside over the public hearing. The presiding official must encourage a free and open discussion of the issues.

(b) *Record of hearing.* The presiding official is responsible for compiling the official record of the hearing. A record of a hearing is a summary of oral testimony and all written statements submitted at the hearing. Additional written comments made or provided at the hearing, or within five working days of the hearing, will be made a part of the record.

(c) *Hearing process.* (1) The presiding official explains the purpose of the hearing and provides an agenda;

(2) The presiding official solicits public comments from the audience on the merits of TTP projects and activities; and

(3) The presiding official informs the hearing audience of the appropriate procedures for a proposed TTP project or activity that may include, but are not limited to:

(i) Project development activities;

(ii) Rights-of-way acquisition;

(iii) Environmental and archeological clearance;

(iv) Relocation of utilities and relocation services;

(v) Authorized payments under the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. 4601 *et seq.,* as amended;

(vi) Draft transportation plan; and

(vii) The scope of the project and its effect on traffic during and after construction.

(d) *Availability of information.* Appropriate maps, plats, project plans, and specifications will be available at the hearing for public review. Appropriate officials must be present to answer questions.

(e) *Opportunity for comment.* Comments are received as follows:

(1) Oral statements at the hearing;

(2) Written statements submitted at the hearing; and

(3) Written statements sent to the address noted in the hearing notice within five working days following the public hearing.

§ 170.440 How can the public learn the results of a public hearing?

Within 20 working days after the public hearing, the presiding official will issue and post at the hearing site a statement that:

(a) Summarizes the results of the hearing;

(b) Explains any needed further action;

(c) Explains how the public may request a copy; and

(d) Outlines appeal procedures.

§ 170.441 Can a decision resulting from a hearing be appealed?

Yes. A decision resulting from the public hearing may be appealed under 25 CFR part 2.

National Tribal Transportation Facility Inventory

§ 170.442 What is the National Tribal Transportation Facility Inventory?

(a) The National Tribal Transportation Facility Inventory (NTTFI), is defined under § 170.5 of this part.

(b) BIA, FHWA, or Tribes can also use the NTTFI to assist in transportation and project planning, justify expenditures, identify transportation needs, maintain existing TTP facilities, and develop management systems.

(c) The Secretaries may include additional transportation facilities in the NTTFI if the additional facilities are included in a uniform and consistent manner nationally.

(d) As required by 23 U.S.C. 144, all bridges in the NTTFI will be inspected and recorded in the national bridge inventory administered by the Secretary of Transportation.

(e) In accordance with 23 U.S.C. 202(b)(1)(A–B) and the principles of program stewardship and oversight, the Secretaries have the authority to maintain the NTTFI and shall ensure the eligibility of the facilities and the accuracy of the data included in the NTTFI.

§ 170.443 What is required to successfully include a proposed transportation facility in the NTTFI?

(a) A proposed transportation facility is any transportation facility, including a highway bridge, that will serve public transportation needs, meets the eligibility requirements of the TTP, and does not currently exist. It must meet the eligibility requirements of the TTP and be open to the public when constructed. In order to have a proposed facility placed on the NTTFI, a Tribe must submit all of the following to the BIADOT/FHWA Quality Assurance Team for consideration:

(1) A Tribal resolution or other official action identifying support for the facility and its placement on the NTTFI.

(2) A copy of the Tribe's LRTP containing:

(i) A description of the current land use and identification of land ownership within the proposed road's corridor (including what public easements may be required);

(ii) A description of need and outcomes for the facility including a description of the project's termini; and

(iii) The sources of funding to be used for construction.

(3) If the landowner is a public authority other than the Tribe or BIA, documentation from the public authority that the proposed road has been identified in their LRTP, STIP approved by FHWA, or other published transportation planning documents.

(4) Documentation clearly identifying that easements or rights-of-way have been acquired or a clear written statement of willingness to provide a right-of-way from each landowner along the route.

(5) Certification that a public involvement process has been carried out for the proposed road.

(6) A synopsis discussing the project's anticipated environmental impacts as well as the engineering and construction challenges.

(7) Documentation that the project can meet financial or fiscal constraint requirements including financial information demonstrating that the project can be implemented using existing or reasonably available funding sources, and that the project route can be adequately maintained after construction. (See 23 U.S.C. 134 and 135.)

(8) Documentation identifying the entity responsible for maintenance of the facility after construction is completed.

(b) For those proposed roads that currently exist in the NTTFI, the requirements identified above as paragraphs (a)(1) through (a)(8) of this section, must be completed and submitted for approval to BIA and FHWA within November 7, 2017, in order to remain on the inventory.

§ 170.444 How is the NTTFI updated?

(a) Submitting data into the NTTFI for a new facility is carried out on an annual basis as follows:

(1) BIA Regional Offices provide each Tribe within its region with a copy of the Tribe's own NTTFI data during the first quarter of each fiscal year.

(2) Tribes review the provided data and are responsible for entering all changes/updates into the database. This work must be completed by March 15. The submissions must include, at a minimum, all required minimum attachments (see § 170.446) and authorizing resolutions or similar official authorizations.

(3) The BIA Regional Office reviews each Tribe's submission. If any errors or omissions are identified, the BIA Regional Office will return the submittals along with a request for corrections to the Tribe no later than May 15. If no errors or omissions are found, the BIA Regional Office validates the data and forwards it to BIADOT for review and approval.

(4) The Tribe must correct any errors or omissions in the data entries or return the corrected submittals back to the BIA Regional Office by June 15.

(5) Each BIA Regional Office must validate its regional data by July 15.

(6) BIADOT approves the current inventory year submissions from BIA Regional Offices by September 30 or returns the submissions to the BIA Regional Office if additional work is required.

(7) New facility data submitted outside of the above referenced dates are not guaranteed for inclusion in the official inventory identified in this subsection.

(b) Updating the data on a facility currently listed in the NTTFI is carried out as follows:

(1) At any time, a Tribe may submit a request to the BIA Region asking for the NTTFI data of an existing facility to be updated. The request must include the Tribe's updated data and background information on how and why the data was obtained. At the request of a Tribe, FHWA may assist BIA and the Tribe in updating the NTTFI data as required under this part.

(2) The BIA Region must review the submitted data and respond to the Tribe within 30 days of its receipt.

(i) If approved, the BIA Region validates the data and forwards it to BIADOT for review and approval.

(ii) If not approved, the BIA Region returns the submittals to the Tribe along with a detailed written explanation and supporting documentation of the reasons for the disapproval. The Tribe must correct the data entries and return the corrected submittals back to the BIA Region.

(3) BIADOT approves the current inventory year submittals from BIA Regional Offices or returns the submittals to the BIA Regional Office if additional work is required.

(c) A Tribe may appeal the rejection of submitted data on a new or existing facility included in the NTTFI by filing a written notice of appeal to the Director, Bureau of Indian Affairs, with a copy to the BIA Regional Director.

(d) To be included in the annual NTTFI update used for administrative and reporting purposes for any given fiscal year, submittals for new facilities and updates for existing facilities must be officially accepted by BIA and FHWA by September 30th of that year.

§ 170.445 [Reserved].

§ 170.446 What minimum attachments are required for an NTTFI submission?

The minimum attachments required for a facility to be added into the NTTFI include the following.

(a) A long-range transportation plan.

(b) A Tribal resolution or official authorization that refers to all route numbers, names, locations, lengths, construction needs, and ownerships.

(c) A Strip map. See § 170.5.

(d) Average Daily Traffic (ADT) documentation.

(e) A typical or representative section photo or bridge profile photo.

(f) Incidental cost verification.

(g) Acknowledgement of Public Authority responsibility.

(h) For proposed roads, see § 170.443 for additional required attachments.

Please see the TTP Coding Guide for additional information on the NTTFI minimum attachments.

§ 170.447 How are the allowable lengths of access roads in the NTTFI determined?

The allowable length of an access road in the NTTFI is determined as follows:

(a) If the road section intersects or abuts a federally recognized Tribal boundary, then the length of the access road is the distance from the boundary extending to the intersection of an equal or greater functional classification but no more than 15 miles.

(b) If the road section does not intersect or abut a federally recognized Tribal boundary, the following applies:

(1) If the road section intersects or abuts an Alaska Native Claims Settlement Act (ANCSA) (43 U.S.C. 1601 *et seq.*) village corporation transportation service area, then the length of the access road is the distance from the ANCSA village corporation transportation service area extending to the intersection of an equal or greater functional classification but no more than 15 miles.

(2) If the road section is located outside of an ANCSA village corporation and located within a developed Alaska Native Village with a population more than 50% Alaska Native/American Indian, then the length of the access road is defined as the distance beginning five miles outside of the developed area of the Alaska Native Village extending to the intersection of an equal or greater functional classification but no more than 15 miles.

(3) If the road section intersects or abuts a Tribally owned trust or fee parcel located outside of an incorporated municipal boundary, then the length of the access road is defined as the distance beginning five miles outside of the Tribally owned trust or fee parcel boundary extending to the intersection of an equal or greater functional classification but no more than 15 miles.

(4) If the road section intersects or abuts a Tribally owned trust or fee parcel located inside of an incorporated municipal boundary, then the length of the access road is defined as the distance from the Tribally owned trust or fee parcel boundary extending to the intersection of an equal or greater functional classification but no more than 15 miles.

Environmental and Archeological Requirements

§ 170.450 What archeological and environmental requirements must the TTP meet?

All BIA, FHWA, and Tribal work for the TTP must comply with cultural resource and environmental requirements under applicable Federal laws and regulations. A list of applicable laws and regulations is shown in appendix A to this subpart and is also available in the official Tribal Transportation Program Guide.

§ 170.451 Can TTP funds be used for archeological and environmental compliance?

Yes. For approved TTP projects, TTP funds can be used for environmental and archeological work consistent with § 170.450 and applicable Tribal laws for:

(a) Road and bridge rights-of-way;

(b) Borrow pits and aggregate pits and water sources associated with TTP activities staging areas;

(c) Limited mitigation outside of the construction limits as necessary to address the direct impacts of the construction activity as determined in the environmental analysis and after consultation with all affected Tribes and appropriate Secretaries; and

(d) Construction easements.

§ 170.452 When can TTP funds be used for archeological and environmental activities?

TTP funds can be used on a project's archeological and environmental activities only after the TTP facility is included in the Tribe's LRTP and the NTTFI, and the project identified on an FHWA-approved TTPTIP.

§ 170.453 Do the Categorical Exclusions under the National Environmental Policy Act (NEPA) and the regulations at 23 CFR 771 apply to TTP activities?

Yes. Regardless of whether BIA or FHWA is responsible for the oversight of a Tribe's TTP activities, the Categorical Exclusions under NEPA at 23 CFR 771.117 governing the use of funds made available through title 23 shall apply to all qualifying TTP projects involving the construction or maintenance of roads.

Design

§ 170.454 What design standards are used in the TTP?

(a) Depending on the nature of the project, Tribes must use appropriate design standards approved by FHWA. Appendix B to this subpart as well as the official Tribal Transportation Program Guide list the applicable design standards that can be used.

(b) All other design standards not listed in (a) must receive approval from FHWA.

§ 170.455 What other factors must influence project design?

The appropriate design standards must be applied to each construction project consistent with a minimum 20-year design life for highway projects and 75-year design life for highway bridges. The design of TTP projects must take into consideration:

(a) The existing and planned future use of the facility in a manner that is conducive to safety, durability, and economy of maintenance;

(b) The particular needs of each locality, and the environmental, scenic, historic, aesthetic, community, and other cultural values and mobility needs in a cost effective manner; and

(c) Access and accommodation for other modes of transportation.

§ 170.456 How can a Tribe request an exception from the design standards?

(a) A Tribe can request an exception from the required design standards from FHWA. The engineer of record (the State licensed civil engineer whose name and professional stamp appear on the PS&E or who is responsible for the overall project design) must submit written documentation with appropriate supporting data, sketches, details, and justification based on engineering analysis.

(b) FHWA can approve a project design that does not conform to the minimum criteria only after giving due consideration to all project conditions, such as:

(1) Maximum service and safety benefits for the dollar invested;

(2) Compatibility with adjacent features; and

(3) Probable time before reconstruction of the project due to changed conditions or transportation demands.

(c) FHWA has 30 days from receiving the request to approve or decline the exception.

§ 170.457 Can a Tribe appeal a denial?

Yes. Tribes may appeal the denial of a design exception to: FHWA Office of Federal Lands Highway, 1200 New Jersey Ave. SE., HFL–1, Washington, DC 20590. If FHWA denies a design exception, the Tribe may appeal the decision Office of the FHWA Administrator, 1200 New Jersey Ave. SE., HOA–1, Washington, DC 20590.

Review and Approval of Plans, Specifications and Estimates

§ 170.460 What must a project package include?

The project package must include the following documentation, approved by the appropriate Public Authority, before the start of construction:

(a) Plans, specifications, and estimates;

(b) A Tribal resolution or other authorized document supporting the project;

(c) Certification of compliance with the requirements of 25 CFR part 169, as well as any additional public taking documentation clearances, if applicable.

(d) Required environmental, archeological, and cultural clearances; and

(e) Identification of design exceptions if used in the plans.

§ 170.461 May a Tribe approve plans, specifications, and estimates?

An Indian Tribal government may approve plans, specifications and estimates and commence road and bridge construction with funds made available from the TTP through a self-determination contract, self-governance agreement, Program Agreement or other appropriate agreement, developed in accordance with 23 U.S.C. 202(b)(6) & (b)(7), if the Indian Tribal government:

(a) Provides assurances in the contract or agreement that the construction will meet or exceed applicable health and safety standards;

(b) Obtains advance review of the plans and specifications from a State-licensed civil engineer that has certified that the plans and specifications meet or exceed the applicable health and safety standards;

(c) Provides a copy of the certification under paragraph (a) of this section to the Deputy Assistant Secretary for Tribal Government Affairs, Department of Transportation, or the Assistant Secretary—Indian Affairs, DOI, as appropriate; and

(d) Provides a copy of all project documentation identified in § 170.460 to BIA or FHWA before the start of construction.

§ 170.463 What if a design deficiency is identified?

If the Secretaries identify a design deficiency that may jeopardize public health and safety if the facility is completed, they must:

(a) Immediately notify the Tribe of the design deficiency and request that the Tribe promptly resolve the deficiency under the standards in § 170.454; and

(b) For a BIA-prepared PS&E package, promptly resolve the deficiency under

the standards in § 170.454 and notify the Tribe of the required design changes.

Construction and Construction Monitoring

§ 170.470 Which construction standards must Tribes use?

(a) Tribes must either:

(1) Use the approved standards referred to in § 170.454; or

(2) Request approval for any other road and highway bridge construction standards that are consistent with or exceed the standards referred to in § 170.454.

(b) For designing and building eligible intermodal projects funded by the TTP, Tribes must use either:

(1) Nationally recognized standards for comparable projects; or

(2) Tribally adopted standards that meet or exceed nationally recognized standards for comparable projects.

§ 170.471 How are projects administered?

(a) When a Tribe carries out a TTP project, the project will be administered in accordance with a self-determination contract, self-governance agreement, Program Agreement or other appropriate agreement and this regulation.

(b) If BIA or FHWA discovers a problem during an on-site monitoring visit, BIA or FHWA must promptly notify the Tribe and, if asked, provide technical assistance.

(c) Only the State-licensed professional engineer of record whose name and professional stamp appear on the PS&E or who is responsible for the overall project design may change a TTP project's PS&E during construction.

(1) The original approving agency must review each substantial change. The approving agency is the Federal, Tribal, State, or local entity with PS&E approval authority over the project.

(2) The approving agency must consult with the affected Tribe and the entity having maintenance responsibility.

(3) A change that exceeds the limits of available funding may be made only with the approving agency's consent.

§ 170.472 What construction records must Tribes and BIA keep?

The following table shows which TTP construction records BIA and Tribes must keep and the requirements for access.

Record keeper	Records that must be kept	Access requirements
(a) Tribe	All records required by ISDEAA and 25 CFR 900.130–131 or 25 CFR 1000.243 and 1000.249, as appropriate.	BIA and FHWA are allowed access to Tribal TTP construction and approved project specifications as required under 25 CFR 900.130, 900.131, 25 CFR 1000.243 and 1000.249, or the Program Agreement as appropriate.
(b) BIA	Completed daily reports of construction activities appropriate to the type of construction it is performing.	Upon reasonable advance request by a Tribe, BIA must provide reasonable access to records.

§ 170.473 When is a project complete?

A project is considered substantially complete when all work is completed and accepted (except for minor tasks yet to be completed (punch list)) and the project is open to traffic. The project is completed only after all the requirements of this section are met.

(a) At the end of a construction project, the public authority, agency, or organization responsible for the project must make a final inspection. The inspection determines whether the project has been completed in reasonable conformity with the PS&E.

(1) Appropriate officials from the Tribe, BIA, responsible public authority, and FHWA should participate in the inspection, as well as contractors and maintenance personnel.

(2) All project information must be made available during final inspection and used to develop the TTP construction project closeout report. Some examples of project information are: Daily diaries, weekly progress reports, subcontracts, subcontract expenditures, salaries, equipment expenditures, as-built drawings, etc.

(b) After the final inspection, the facility owner makes final acceptance of the project. At this point, the Tribe or BIA must complete a project closeout and final accounting of all TTP construction project expenditures under § 170.474.

(c) If applicable, all documents required by 25 CFR part 169 must be completed.

§ 170.474 Who conducts the project closeout?

The following table shows who must conduct the TTP construction project closeout and develop the report.

If the project was completed by . . .	then . . .	and the closeout report must . . .
(a) BIA	The region engineer or designee is responsible for closing out the project and preparing the report.	(1) Summarize the construction project records to ensure compliance requirements have been met; (2) Review the bid item quantities and expenditures to ensure reasonable conformance with the PS&E and modifications; (3) Be completed within 120 calendar days of the date of acceptance of the TTP construction project; and (4) Be provided to the affected Tribes and the Secretaries.
(b) A Tribe	Agreements negotiated under ISDEAA, or other appropriate agreements specify who is responsible for closeout and preparing the report.	(1) Meet the requirements of ISDEAA; (2) Comply with 25 CFR 900.130(d) and 131(b)(10) and 25 CFR 1000.249, or the Program Agreement, as applicable; (3) Be completed within 120 calendar days of the date of acceptance of the project; and (4) Be provided to all parties specified in the agreements.

Management Systems

§ 170.502 Are nationwide management systems required for the TTP?

(a) To the extent appropriate, the Secretaries, in consultation with Tribes, will implement safety, bridge, pavement, and congestion management systems for the Federal and Tribal facilities included in the NTTFI.

(b) A Tribe may develop its own Tribal management system based on the nationwide management system requirements in 23 CFR part 973. The Tribe may use either TTP formula funds or transportation planning funds defined in 23 U.S.C. 202(c) for this purpose. The Tribal system must be consistent with Federal management systems.

Tribal Transportation Facility Bridges

§ 170.510 What funds are available for Tribal Transportation Facility Bridge activities?

Funds are made available in 23 U.S.C. 202(d) for improving deficient bridges eligible for the TTP.

§ 170.511 What activities are eligible for Tribal Transportation Facility Bridge funds?

(a) The activities that are eligible for 23 U.S.C. 202(d) funding are:

(1) Carrying out any planning, design, engineering, preconstruction, construction, and inspection of a bridge project to replace, rehabilitate, seismically retrofit, paint, apply calcium magnesium acetate, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and deicing composition; or

(2) Implementing any countermeasure for deficient Tribal transportation facility bridges, including multiple-pipe culverts.

(b) Further information regarding the use and availability of these funds can be found at 23 CFR part 661.

§ 170.512 How will Tribal Transportation Facility Bridge funds be made available to the Tribes?

Funds made available to Tribes under 23 U.S.C. 202(d) may be included in the Tribe's self-determination contracts, self-governance agreements, Program Agreements, and other appropriate agreements.

§ 170.513 When and how are bridge inspections performed?

(a) All bridges identified on the NTTFI must be inspected under 23 U.S.C. 144.

(b) Employees performing inspections as required by § 170.513(a) must:

(1) Notify affected Tribes and State and local governments that an inspection will occur;

(2) Offer Tribal and State and local governments the opportunity to accompany the inspectors; and

(3) Otherwise coordinate with Tribal and State and local governments.

(c) The person responsible for the bridge inspection team must meet the qualifications for bridge inspectors as defined in 23 U.S.C. 144.

§ 170.514 Who reviews bridge inspection reports?

The person responsible for the bridge inspection team must send a copy of the inspection report to BIADOT. BIADOT:

(a) Reviews the report for quality assurance and works with FHWA to ensure the requirements of 23 U.S.C. 144 are carried out; and

(b) Furnishes a copy of the report to the BIA Regional Office, which will forward the copy to the affected Tribe.

Appendix A to Subpart D—Cultural Resource and Environmental Requirements for the TTP

All BIA, FHWA, and Tribal work for the TTP must comply with cultural resource and environmental requirements under applicable Federal laws and regulations, including, but not limited to:

1. 16 U.S.C. 1531, Endangered Species Act.
2. 16 U.S.C. 4601, Land and Water Conservation Fund Act (Section 6(f)).
3. 16 U.S.C. 661–667d, Fish and Wildlife Coordination Act.
4. 23 U.S.C. 138, Preservation of Parklands, commonly referred to as 4(f).
5. 25 U.S.C. 3001–3013, Native American Graves Protection and Repatriation Act.
6. 33 U.S.C. 1251, Federal Water Pollution Control Act and Clean Water Act.
7. 42 U.S.C. 7401, Clean Air Act.
8. 42 U.S.C. 4321, National Environmental Policy Act.
9. 49 U.S.C. 303, Preservation of Parklands.
10. 7 U.S.C. 4201, Farmland Protection Policy Act.
11. 50 CFR part 402, Endangered Species Act regulations.
12. 7 CFR part 658, Farmland Protection Policy Act regulations.
13. 40 CFR part 93, Air Quality Conformity and Priority Procedures for use in Federal-aid Highway and Federally-Funded Transit Programs.
14. 23 CFR part 771, Environmental Impact and Related Procedures.
15. 23 CFR part 772, Procedures for Abatement of Highway Traffic Noises and Construction Noises.
16. 23 CFR part 777, Mitigation of Impacts To Wetlands and Natural Habitat.
17. 36 CFR part 800, Protection of Historic Properties.
18. 40 CFR parts 260–271, Resource Conservation and Recovery Act regulations.
19. Applicable Tribal/State laws.
20. Other applicable Federal laws and regulations.

Appendix B to Subpart D—Design Standards for the TTP

Depending on the nature of the project, Tribes must use the latest edition of the following design standards, as applicable. Additional standards may also apply. In addition, Tribes may develop design standards that meet or exceed the standards listed in this appendix. To the extent that any provisions of these standards are inconsistent with ISDEAA, these provisions do not apply.

1. AASHTO Policy on Geometric Design of Highways and Streets.
2. AASHTO A Guide for Transportation Landscape and Environmental Design.
3. AASHTO Roadside Design Guide.
4. AASHTO Guide for Selecting, Locating and Designing Traffic Barriers.
5. AASHTO Standard Specifications for Highway Bridges.
6. AASHTO Guidelines of Geometric Design of Very Low-Volume Local Roads (ADT less than or equal to 400).
7. FHWA Federal Lands Highway, Project Development and Design Manual.
8. FHWA Flexibility in Highway Design.
9. FHWA Roadside Improvements for Local Road and Streets.
10. FHWA Improving Guardrail Installations and Local Roads and Streets.
11. 23 CFR part 625, Design Standards for Highways.
12. 23 CFR part 630, Preconstruction Procedures.
13. 23 CFR part 633, Required Contract Provisions.
14. 23 CFR part 635, Construction and Maintenance.
15. 23 CFR part 645, Utilities.
16. 23 CFR part 646, Railroads.
17. 23 U.S.C. 106, PS&E.
18. 23 U.S.C. 109, Standards.
19. DOT Metric Conversion Plan, October 31, 1991.
20. MUTCD Manual of Uniform Traffic Safety Devices.
21. Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects.
22. FHWA-approved State standards.
23. FHWA-approved Tribal design standards.

Subpart E—Service Delivery for Tribal Transportation Program

Funding Process

§ 170.600 What must BIA include in the notice of funds availability?

(a) Upon receiving the total or partial fiscal year of TTP funding from FHWA:

(1) BIA will send a notice of funds availability to each BIA Regional Office and FHWA that includes the TTP Tribal share funding available to each Tribe within each region; and

(2) BIA and FHWA will forward the information to the Tribes along with an offer of technical assistance.

(b) BIA and FHWA will distribute Tribal share funds to eligible Tribes upon execution of all required agreements or contracts between BIA/

FHWA and the Tribe. This distribution must occur:

(1) Within 30 days after funds are made available to the Secretary under this paragraph; and

(2) Upon execution of all required agreements or contracts between BIA/FHWA and the Tribe.

(c) Funds made available under this section must only be expended on projects and activities identified in an FHWA-approved TTIP. The TTPTIP (see § 170.424) is available on the BIA Transportation and FHWA Web sites.

§ 170.602 If a Tribe incurs unforeseen construction costs, can it get additional funds?

The TTP is a Tribal shares program based upon a statutory funding formula. Therefore, no additional TTP funding beyond each Tribe's share is available for unforeseen construction costs. However, a Tribe may reprogram their TTP Tribal shares from other projects or activities identified on their FHWA-approved TTIP to cover unforeseen costs. In addition, if a Tribe is operating under a self-determination contract, it may request that additional dollars from its TTP Tribal share funds be made available for that project under 25 CFR 900.130(e).

Miscellaneous Provisions

§ 170.605 May BIA or FHWA use force-account methods in the TTP?

When requested by a Tribe, BIA or FHWA may use force-account methods in carrying out the eligible work of the TTP. Applicable Federal acquisition laws and regulations apply to BIA and FHWA when carrying out force-account activities on behalf of a Tribe.

§ 170.606 How do legislation and procurement requirements affect the TTP?

Other legislation and procurement requirements apply to the TTP as shown in the following table:

Legislation, regulation or other requirement	Applies to Tribes under self-determination contracts	Applies to Tribes under self-governance agreements	Applies to Tribes under BIA or FHWA program agreements	Applies to activities performed by the Secretary
Buy Indian Act	No	No	No	Yes.
Buy American Act	No	No	No	Yes.
Federal Acquisition Regulation (FAR)	No(a)	No	No	Yes.
Federal Tort Claims Act	Yes	Yes	Yes	Yes.
Davis-Bacon Act	Yes(b)	Yes(b)	Yes(b)	Yes.

(a) Unless agreed to by the Tribe or Tribal organization under ISDEAA, 25 U.S.C. 450j(a), and 25 CFR 900.115.
(b) Does not apply when Tribe performs work with its own employees.

§ 170.607 Can a Tribe use its allocation of TTP funds for contract support costs?

Yes. Contract support costs are an eligible item out of a Tribe's TTP allocation and must be included in a Tribe's project construction budget.

§ 170.608 Can a Tribe pay contract support costs from DOI or BIA appropriations?

No. Contract support costs for TTP construction projects cannot be paid out of DOI or BIA appropriations.

§ 170.609 Can a Tribe receive additional TTP funds for start-up activities?

No. Additional TTP funding for start-up activities is not available.

Contracts and Agreements

§ 170.610 Which TTP functions may a Tribe assume?

A Tribe may assume all TTP functions and activities that are otherwise contractible and non-inherently Federal under self-determination contracts, self-governance agreements, Program Agreements; and other appropriate agreements. The appendix to this subpart contains the list of program functions that cannot be subcontracted. Administrative support functions are an eligible use of TTP funding.

§ 170.611 What special provisions apply to ISDEAA contracts and agreements?

(a) *Multi-year contracts and agreements.* The Secretary can enter into a multi-year TTP self-determination contract and self-governance agreement with a Tribe under sections 105(c)(1)(A) and (2) of ISDEAA. The amount of the contracts or agreements is subject to the availability of appropriations.

(b) *Consortia.* Under title I and title IV of ISDEAA, Tribes and multi-tribal organizations are eligible to assume TTPs under consortium contracts or agreements. For an explanation of self-determination contracts, refer to title I, 25 U.S.C. 450f. For an explanation of self-governance agreements, see title IV, 25 U.S.C. 450b(l) and 458b(b)(2).

(c) *Advance payments.* The Secretary and the Tribe must negotiate a schedule of advance payments as part of the terms of a self-determination contract under 25 CFR 900.132.

(d) *Design and construction contracts.* The Secretary can enter into a design/construct TTP self-determination contract that includes both the design and construction of one or more TTP projects. The Secretary may make advance payments to a Tribe:

(1) Under a self-determination design/construct contract for construction activities based on progress, need, and the payment schedule negotiated under 25 CFR 900.132; and

(2) Under a self-governance agreement in the form of annual or semiannual installments as indicated in the agreement.

§ 170.612 Can non-contractible functions and activities be included in contracts or agreements?

Non-contractible TTP functions and activities cannot be included in self-determination contracts, self-governance agreements, Program Agreements, or other agreements. The appendix to this subpart contains a list of TTP functions and activities that cannot be contracted.

§ 170.613 What funds are used to pay for non-contractible functions and activities?

(a) The administrative expenses funding identified in 23 U.S.C. 202(a)(6) are used by the BIA and FHWA transportation personnel when performing non-contractible functions and activities, including:

(1) Program management and oversight; and

(2) Project-related administration activities.

(b) If a Tribe enters into a Program Agreement with FHWA under 23 U.S.C. 202(b)(7), the program agreement may include such additional amounts as the Secretary of Transportation determines would equal the amount that would have been withheld for the costs of the Bureau of Indian Affairs for administration of the program or project.

§ 170.614 Can a Tribe receive funds before BIA publishes the final notice of funding availability?

A Tribe can receive funds before BIA publishes the final notice of funding availability required by § 170.600(a) when partial year funding is made available to the TTP through continuing resolutions or other Congressional actions.

§ 170.615 Can a Tribe receive advance payments for non-construction activities under the TTP?

Yes. A Tribe must receive advance payments for non-construction activities under 25 U.S.C. 450*l* for self-determination contracts on a quarterly, semiannual, lump-sum, or other basis proposed by a Tribe and authorized by law.

§ 170.616 How are payments made to Tribes if additional funds are available?

After an Agreement between BIA or FHWA and the Tribe is executed, any additional funds will be made available to Tribes under the terms of the executed Agreement.

§ 170.617 May a Tribe include a contingency in its proposal budget?

(a) A Tribe with a self-determination contract may include a contingency amount in its proposed budget under 25 CFR 900.127(e)(8).

(b) A Tribe with a self-governance agreement may include a project-specific line item for contingencies if the Tribe does not include its full TTP funding allocation in the agreement.

(c) The amounts in both paragraphs (a) and (b) of this section must be within the Tribal share made available or within the negotiated ISDEAA contract or agreement.

§ 170.618 Can a Tribe keep savings resulting from project administration?

All funds made available to a Tribe through the 23 U.S.C. 202(b) are considered ''tribal'' and are available to the Tribe until expended. However, they must be expended on projects and activities referenced on an FHWA-approved TTPTIP.

§ 170.619 Do Tribal preference and Indian preference apply to TTP funding?

Tribal preference and Indian preference apply to TTP funding as shown in the following table:

If . . .	Then . . .
(a) A contract serves a single Tribe	Section 7(c) under Title 1 of ISDEAA allows Tribal employment or contract preference laws, including Tribe local preference laws, to govern.
(b) A contract serves more than one Tribe	Section 7(b) under Title 1 of ISDEAA applies.
(c) A self-governance agreement exists under Title IV of ISDEAA	25 CFR 1000.406 applies.
(d) A Program Agreement	The language of the Program Agreement applies.

§ 170.620 How do ISDEAA's Indian preference provisions apply?

This section applies when the Secretary or a Tribe enters into a cooperative, reimbursable, or other agreement with a State or local government for a TTP construction project. The Tribe and the parties may choose to incorporate the provisions of section 7(b) of ISDEAA in the agreement.

§ 170.621 What if a Tribe doesn't perform work under a contract or agreement?

If a Tribe fails to substantially perform work under a contract or agreement:

(a) For self-determination contracts, the Secretary must use the monitoring and enforcement procedures in 25 CFR 900.131(a) and (b) and ISDEAA, part 900 subpart L (appeals);

(b) For self-governance agreements, the Secretary must use the monitoring and enforcement procedures in 25 CFR part 1000, subpart K; or

(c) For FHWA or BIA TTP Agreements, the Secretaries will use the procedures identified in the Agreements.

§ 170.622 What TTP functions, services, and activities are subject to the self-governance construction regulations?

All TTP design and construction projects and activities, whether included separately or under a program in the agreement, are subject to the regulations in 25 CFR part 1000, subpart K, including applicable exceptions.

§ 170.623 How are TTP projects and activities included in a self-governance agreement?

To include a TTP project or activity in a self-governance agreement, the following information is required:

(a) All work must be included in the FHWA-approved TTPTIP; and

(b) All other information required under 25 CFR part 1000, subpart K.

§ 170.624 Is technical assistance available?

Yes. Technical assistance is available from BIA, the Office of Self-Governance, and FHWA for Tribes with questions about contracting the TTP or TTP projects.

§ 170.625 What regulations apply to waivers?

The following regulations apply to waivers:

(a) For self-determination contracts, 25 CFR 900.140 through 900.148;

(b) For self-governance agreements, 25 CFR 1000.220 through 1000.232; and

(c) For direct service, 25 CFR 1.2.

§ 170.626 How does a Tribe request a waiver of a Department of Transportation regulation?

A Tribe can request a waiver of a Department of Transportation regulation as shown in the following table:

If the Tribe's contract or agreement is with . . .	and . . .	then the Tribe must . . .
(a) The Secretary	the contract is a self-determination contract.	follow the procedures in ISDEAA, Title I, and 25 CFR 900.140 through 900.148.
(b) The Secretary	the agreement is a Tribal self-governance agreement.	follow the procedures in 25 CFR 1000.220 through 1000.232.
(c) The Secretary of Transportation		make the request to the Secretary of Transportation at: 1200 New Jersey Ave. SE., HFL–1, Washington, DC 20590.

§ 170.627 Can non-TTP funds be provided to a Tribe through an FHWA Program Agreement, BIA TTP Agreement or other appropriate agreement?

In addition to all funds made available under chapter 2 of title 23, the cooperation of States, counties, and other local subdivisions may be accepted in construction and improvement of a Tribal transportation facility. In accordance with 23 U.S.C. 202(a)(9), any funds received from a State, county, or local subdivision may be credited by the Secretaries to appropriations available for the TTP. Subject to an agreement among the Tribe, BIA or FHWA, and the State, county, or local subdivision that addresses the purpose and intent of the funds such funds may be provided to the Tribe through an a self-determination contract, self-governance agreement, Program Agreement or other appropriate agreement developed in accordance with 23 U.S.C. 202(b)(6) & (b)(7).

Appendix to Subpart E—List of Program Functions That Cannot Be Subcontracted

Per § 170.612, program functions cannot be included in self-determination contracts, self-governance agreements, Program Agreements, or other agreements. Program functions include all of the following:

(a) TTP project-related pre-contracting activities:

(1) Notifying Tribes of available funding including the right of first refusal; and

(2) Providing technical assistance.

(b) TTP project-related contracting activities:

(1) Providing technical assistance;

(2) Reviewing all scopes of work under 25 CFR 900.122;

(3) Evaluating proposals and making declination decisions, if warranted;

(4) Performing declination activities;

(5) Negotiating and entering into contracts or agreements with State, Tribal, and local governments and other Federal agencies;

(6) Processing progress payments or contract payments;

(7) Approving contract modifications;

(8) Processing claims and disputes with Tribal governments; and

(9) Closing out contracts or agreements.

(c) Planning activities:

(1) Reviewing and approving TTPTIPs developed by Tribes or other contractors; and

(2) Reviewing and approving TTP LRTPs developed by Tribes or other contractors.

(d) Environmental and historical preservation activities:

(1) Reviewing and approving all items required for environmental compliance; and

(2) Reviewing and approving all items required for archaeological compliance.

(e) Processing rights-of-way:

(1) Reviewing rights-of-way applications and certifications;

(2) Approving rights-of-way documents;

(3) Processing grants and acquisition of rights-of-way requests for Tribal trust and allotted lands under 25 CFR part 169;

(4) Responding to information requests;

(5) Reviewing and approving documents attesting that a project was constructed entirely within a right-of-way granted by BIA; and

(6) Performing custodial functions related to storing rights-of-way documents.

(f) Conducting project development and design under 25 CFR 900.131:

(1) Participating in the plan-in-hand reviews on behalf of BIA as facility owner;

(2) Reviewing and/or approving PS&E for health and safety assurance on behalf of BIA as facility owner;

(3) Reviewing PS&E to assure compliance with NEPA as well as all other applicable Federal laws; and

(4) Reviewing PS&E to assure compliance with or exceeding Federal standards for TTP design and construction.

(g) Construction:

(1) Making application for clean air/clean water permits as facility owner;

(2) Ensuring that all required State/tribal/Federal permits are obtained;

(3) Performing quality assurance activities;

(4) Conducting value engineering activities as facility owner;

(5) Negotiating with contractors on behalf of the Federal Government;

(6) Approving contract modifications/change orders;

(7) Conducting periodic site visits;

(8) Performing all Federal Government-required project-related activities contained in the contract documents and required by 25 CFR parts 900 and 1000;

(9) Conducting activities to assure compliance with safety plans as a jurisdictional responsibility hazardous materials, traffic control, OSHA, etc.;

(10) Participating in final inspection and acceptance of project documents or as-built drawings on behalf of BIA as facility owner; and

(11) Reviewing project closeout activities and reports.

(h) Other activities:

(1) Performing other non-contractible required TTP project activities contained in this part, ISDEAA and part 1000; and

(2) Other title 23 non-project-related management activities.

(i) BIADOT program management:

(1) Developing budget on needs for the TTP;

(2) Developing legislative proposals;

(3) Coordinating legislative activities;

(4) Developing and issuing regulations;

(5) Developing and issuing TTP planning, design, and construction standards;

(6) Developing/revising interagency agreements;

(7) Developing and approving TTP stewardship agreements in conjunction with FHWA;

(8) Developing annual TTP obligation and TTP accomplishments reports;

(9) Developing reports on TTP project expenditures and performance measures for the Government Performance and Results Act (GPRA);

(10) Responding to/maintaining data for congressional inquiries;

(11) Developing and maintaining the funding formula and its database;

(12) Allocating TTP and other transportation funding;

(13) Providing technical assistance to Tribes/Consortiums/tribal organizations/agencies/regions;

(14) Providing national program leadership for other Federal transportation related programs including: Transportation Alternatives Program, Tribal Transportation Assistance Program, Recreational Travel and Tourism, Transit Programs, ERFO Program, and Presidential initiatives;

(15) Participating in and supporting Tribal transportation association meetings;

(16) Coordinating with and monitoring Indian Local Technical Assistance Program centers;

(17) Planning, coordinating, and conducting BIA/tribal training;

(18) Developing information management systems to support consistency in data format, use, etc., with the Secretary of Transportation for the TTP;

(19) Participating in special transportation related workgroups, special projects, task forces and meetings as requested by Tribes;

(20) Participating in national, regional, and local transportation organizations;

(21) Participating in and supporting FHWA Coordinated Technology Implementation program;

(22) Participating in national and regional TTP meetings;

(23) Consulting with Tribes on non-project related TTP issues;

(24) Participating in TTP, process, and product reviews;

(25) Developing and approving national indefinite quantity service contracts;

(26) Assisting and supporting the TTP Coordinating Committee;

(27) Processing TTP bridge program projects and other discretionary funding applications or proposals from Tribes;

(28) Coordinating with FHWA;

(29) Performing stewardship of the TTP;

(30) Performing oversight of the TTP and its funded activities;

(31) Performing any other non-contractible TTP activity included in this part; and

(32) Determining eligibility of new uses of TTP funds.

(j) BIADOT Planning:

(1) Maintaining the official TTP inventory;

(2) Reviewing LRTPs;

(3) Reviewing and approving TTPTIPs;

(4) Maintaining nationwide inventory of TTP strip and atlas maps;

(5) Coordinating with Tribal/State/regional/local governments;

(6) Developing and issuing procedures for management systems;

(7) Distributing approved TTPTIPs to BIA regions;

(8) Coordinating with other Federal agencies as applicable;

(9) Coordinating and processing the funding and repair of damaged tribal roads with FHWA;

(10) Calculating and distributing TTP transportation planning funds to BIA regions;

(11) Reprogramming unused TTP transportation planning funds at the end of the fiscal year;

(12) Monitoring the nationwide obligation of TTP transportation planning funds;
(13) Providing technical assistance and training to BIA regions and Tribes;
(14) Approving atlas maps;
(15) Reviewing TTP inventory information for quality assurance; and
(16) Advising BIA regions and Tribes of transportation funding opportunities.
(k) BIADOT engineering:
(1) Participating in the development of design/construction standards with FHWA;
(2) Developing and approving design/construction/maintenance standards;
(3) Conducting TTP/product reviews; and
(4) Developing and issuing technical criteria for management systems.
(l) BIADOT responsibilities for bridges:
(1) Maintaining the National Bridge Inventory information/database for BIA bridges;
(2) Conducting quality assurance of the bridge inspection program;
(3) Reviewing and processing TTP Bridge Program applications;
(4) Participating in second level review of TTP bridge PS&E; and
(5) Developing criteria for bridge management systems.
(m) BIADOT responsibilities to perform other non-contractible required TTP activities contained in this part.
(n) BIA regional offices program management:
(1) Designating TTP System roads;
(2) Notifying Tribes of available funding;
(3) Developing STIPs;
(4) Providing FHWA-approved TTPTIPs to Tribes;
(5) Providing technical assistance to Tribes/Consortiums/tribal organizations/agencies;
(6) Funding common services as provided as part of the region/agency/BIA Division of Transportation TTP costs;
(7) Processing and investigating non-project related tort claims;
(8) Preparing budgets for BIA regional and agency TTP activities;
(9) Developing/revising interagency agreements;
(10) Developing control schedules/transportation improvement programs;
(11) Developing regional TTP stewardship agreements;
(12) Developing quarterly/annual TTP obligation and program accomplishments reports;
(13) Developing reports on TTP project expenditures and performance measures for Government Performance and Results Act (GPRA);
(14) Responding to/maintaining data for congressional inquiries;
(15) Participating in Indian transportation association meetings;
(16) Participating in Indian Local Technical Assistance Program (LTAP) meetings and workshops;
(17) Participating in BIA/tribal training development highway safety, work zone safety, etc.;
(18) Participating in special workgroups, task forces, and meetings as requested by Tribes and BIA region/agency personnel;
(19) Participating in national, regional, or local transportation organizations meetings and workshops;
(20) Reviewing Coordinated Technology Implementation Program project proposals;
(21) Consulting with Tribal governments on non-project related program issues;
(22) Funding costs for common services as provided as part of BIA TTP region/agency/contracting support costs;
(23) Reviewing TTP atlas maps;
(24) Processing Freedom of Information Act (FOIA) requests;
(25) Monitoring the obligation and expenditure of all TTP funds allocated to the BIA Region;
(26) Performing activities related to the application for ERFO funds, administration, and oversight of the funds; and
(27) Participating in TTP, process, and product reviews.
(o) BIA regional offices' planning:
(1) Coordinating with Tribal/State/regional/local government;
(2) Coordinating and processing the funding and repair of damaged Tribal Transportation Facility roads with Tribes;
(3) Reviewing and approving TTP inventory data;
(4) Maintaining, reviewing, and approving the management systems databases;
(5) Reviewing and approving STIPs; and
(6) Performing Federal responsibilities identified in the TTP Transportation Planning Procedures and Guidelines manual.
(p) BIA regional offices' engineering:
(1) Approving Tribal standards for TTP use;
(2) Developing and implementing new engineering techniques in the TTP; and
(3) Providing technical assistance.
(q) BIA regional offices' responsibilities for bridges:
(1) Reviewing and processing TTP Bridge Program applications;
(2) Reviewing and processing TTP bridge inspection reports and information; and
(3) Ensuring the safe use of roads and bridges.
(r) BIA regional offices' other responsibilities for performing other non-contractible required TTP activities contained in this part.

Subpart F—Program Oversight and Accountability

§ 170.700 What is the TTP national business plan?

The TTP national business plan delineates the respective roles and responsibilities of BIA and FHWA in the administration of the TTP and the process used for fulfilling those roles and responsibilities.

§ 170.701 May a direct service Tribe and BIA Region sign a Memorandum of Understanding?

Yes. A direct service Tribe and BIA Region may sign a Memorandum of Understanding (MOU). A TTP Tribal/BIA Region MOU is a document that a direct service Tribe and BIA may enter into to help define the roles, responsibilities and consultation process between the BIA regional office and the Indian Tribal government. It describes how the TTP will be carried out by BIA on the Tribe's behalf.

§ 170.702 What activities may the Secretaries review and monitor?

The Secretaries review and monitor the performance of all TTP activities.

§ 170.703 What program reviews do the Secretaries conduct?

(a) In accordance with title 23, the national business plan, 2 CFR part 200, and the Program Agreement or other appropriate agreements, BIADOT and FHWA shall conduct formal program reviews of BIA Regional Offices or Tribes to examine program procedures and identify improvements. For a BIA Regional Office review, the regional Tribes will be notified of these formal program reviews. Tribes may send representatives to these meetings at their own expense.
(b) The review will provide recommendations to improve the program, processes and controls of management, planning, design, construction, financial and administration activities.
(c) After the review, the review team shall:
(1) Make a brief oral report of findings and recommendations to the Tribal leadership or BIA Regional Director; and
(2) Within 60 days, provide a written report of its findings and recommendations to the Tribe, BIA, all participants, and affected Tribal governments and organizations.

§ 170.704 What happens when the review process identifies areas for improvement?

When the review process identifies areas for improvement:
(a) The Tribe or regional office must develop a corrective action plan within 60 days;
(b) BIADOT and FHWA review and approve the plan;
(c) FHWA may provide technical assistance during the development and implementation of the plan; and
(d) The reviewed Tribe or BIA regional office implements the plan and reports either annually or biennially to BIADOT and FHWA on implementation.

Subpart G—Maintenance

§ 170.800 What funds are available for maintenance activities?

(a) Under 23 U.S.C. 202(a)(8), a Tribe can use TTP funding for maintenance, within the following limits, whichever is greater:
(1) 25 percent of its TTP funds; or

(2) $500,000.

(b) These funds can only be used to maintain the public facilities included in the NTTFI.

(c) Road sealing activities are not subject to this limitation.

(d) BIA retains primary responsibility, including annual funding request responsibility, for BIA road maintenance programs on Indian reservations.

(e) The Secretary shall ensure that funding made available under the TTP for maintenance of Tribal transportation facilities for each fiscal year is supplementary to, and not in lieu of, any obligation of funds by the BIA for road maintenance programs on Indian reservations.

§ 170.801 Can TTP funds designated on an FHWA-approved TTIP for maintenance be used to improve TTP transportation facilities?

No. The funds identified for maintenance on a FHWA-approved TTIP cannot be used to improve roads or other TTP transportation facilities to a higher road classification, standard or capacity.

§ 170.802 Can a Tribe perform road maintenance?

Yes. A Tribe may enter into self-determination contracts, self-governance agreements, program agreements, and other appropriate agreements to perform Tribal transportation facility maintenance.

§ 170.803 To what standards must a Tribal transportation facility be maintained?

Subject to availability of funding, Tribal transportation facilities must be maintained under either:

(a) A standard accepted by BIA or FHWA (as identified in the official Tribal Transportation Program guide on either the BIA transportation Web site at *http://www.bia.gov/WhoWeAre/BIA/OIS/Transportation/index.htm* or the Federal Lands Highway—Tribal Transportation Program Web site at *http://flh.fhwa.dot.gov/programs/ttp/guide/*), or

(b) Another Tribal, Federal, State, or local government maintenance standard negotiated in an ISDEAA road maintenance self-determination contract or self-governance agreement.

§ 170.804 Who should be contacted if a Tribal transportation facility is not being maintained to TTP standards due to insufficient funding?

The Tribe may notify BIA or FHWA if the Tribe believes that a facility on the NTTFI is not being adequately maintained to the standards identified in § 170.803. If BIA or FHWA determines that a Tribal transportation facility is not being maintained, it will:

(a) Notify the facility owner;

(b) Provide a draft copy of the report to the affected Tribe for comment before forwarding it to Secretary of Transportation; and

(c) Report these findings to the appropriate office within FHWA.

§ 170.805 What maintenance activities are eligible for TTP funding?

TTP maintenance funding support a wide variety of activities necessary to maintain facilities identified in the NTTFI. A list of eligible activities is shown in the appendix to this part.

Appendix to Subpart G—List of Eligible Maintenance Activities Under the Tribal Transportation Program

The following maintenance activities are eligible for funding under the TTP. The list is not all-inclusive.

1. Cleaning and repairing ditches and culverts.
2. Stabilizing, removing, and controlling slides, drift sand, mud, ice, snow, and other impediments.
3. Adding additional culverts to prevent roadway and adjoining property damage.
4. Repairing, replacing or installing traffic control devices, guardrails and other features necessary to control traffic and protect the road and the traveling public.
5. Removing roadway hazards.
6. Repairing or developing stable road embankments.
7. Repairing parking facilities and appurtenances such as striping, lights, curbs, etc.
8. Repairing transit facilities and appurtenances such as bus shelters, striping, sidewalks, etc.
9. Training maintenance personnel.
10. Administering the BIA transportation facility maintenance program.
11. Performing environmental/archeological mitigation associated with transportation facility maintenance.
12. Leasing, renting, or purchasing of maintenance equipment.
13. Paying utilities cost for roadway lighting and traffic signals.
14. Purchasing maintenance materials.
15. Developing, implementing, and maintaining a BIA Transportation Facility Maintenance Management System (TFMMS).
16. Performing pavement maintenance such as pot hole patching, crack sealing, chip sealing, surface rejuvenation, and thin overlays (less than 1 inch).
17. Performing erosion control.
18. Controlling roadway dust.
19. Re-graveling roads.
20. Controlling vegetation through mowing, noxious weed control, trimming, etc.
21. Making bridge repairs.
22. Paying the cost of closing transportation facilities due to safety or other concerns.
23. Maintaining airport runways, heliport pads, and their public access roads.
24. Maintaining and operating BIA public ferry boats.
25. Making highway alignment changes for safety reasons. These changes require prior notice to the Secretary.
26. Making temporary highway alignment or relocation changes for emergency reasons.
27. Maintaining other TTP intermodal transportation facilities provided that there is a properly executed agreement with the owning public authority within available funding.

Subpart H—Miscellaneous Provisions

Reporting Requirements and Indian Preference

§ 170.910 What information on the TTP or projects must BIA or FHWA provide?

All available public information regarding the TTP can be found on the BIA transportation Web site at *http://www.bia.gov/WhoWeAre/BIA/OIS/Transportation/index.htm* or the Federal Lands Highway—Tribal Transportation Program Web site at *http://flh.fhwa.dot.gov/programs/ttp/*. If a Tribe would like additional information that is not available on the Web sites, the Tribe should contact FHWA or BIA directly. FHWA and BIA will then provide direction or assistance based upon the Tribe's specific request.

§ 170.911 Are Indians entitled to employment and training preferences?

(a) Federal law gives hiring and training preferences, to the greatest extent feasible, to Indians for all work performed under the TTP.

(b) Under 25 U.S.C. 450e(b), 23 U.S.C. 140(d), 25 U.S.C. 47, and 23 U.S.C. 202(a)(3), Indian organizations and Indian-owned economic enterprises are entitled to a preference, to the greatest extent feasible, in the award of contracts, subcontracts and sub-grants for all work performed under the TTP.

§ 170.912 Does Indian employment preference apply to Federal-aid Highway Projects?

(a) Tribal, State, and local governments may provide an Indian employment preference for Indians living on or near a reservation on projects and contracts that meet the definition of a Tribal transportation facility. (See 23 U.S.C. 101(a)(12) and 140(d), and 23 CFR 635.117(d).)

(b) Tribes may target recruiting efforts toward Indians living on or near Indian reservations, Tribal lands, Alaska Native villages, pueblos, and Indian communities.

(c) Tribes and Tribal employment rights offices should work cooperatively with State and local governments to develop contract provisions promoting employment opportunities for Indians

on eligible federally funded transportation projects. Tribal, State, and local representatives should confer to establish Indian employment goals for these projects.

§ 170.913 Do Tribal-specific employment rights and contract preference laws apply?

Yes. When a Tribe or consortium administers a TTP or project intended to benefit that Tribe or a Tribe within the consortium, the benefitting Tribe's employment rights and contracting preference laws apply. (See § 170.619 and 25 U.S.C. 450e(c))

§ 170.914 What is the difference between Tribal preference and Indian preference?

Indian preference is a hiring preference for Indians in general. Tribal preference is a preference adopted by a Tribal government that may or may not include a preference for Indians in general, Indians of a particular Tribe, Indians in a particular region, or any combination thereof.

§ 170.915 May Tribal employment taxes or fees be included in a TTP project budget?

Yes. The cost of Tribal employment taxes or fees may be included in the budget for a TTP project.

§ 170.916 May Tribes impose taxes or fees on those performing TTP services?

Yes. Tribes, as sovereign nations, may impose taxes and fees for TTP activities. When a Tribe administers TTPs or projects under ISDEAA, its Tribal employment and contracting preference laws, including taxes and fees, apply.

§ 170.917 Can Tribes receive direct payment of Tribal employment taxes or fees?

This section applies to non-tribally administered TTP projects. Tribes can request that BIA pay Tribal employment taxes or fees directly to them under a voucher or other written payment instrument, based on a negotiated payment schedule. Tribes may consider requesting direct payment of Tribal employment taxes or fees from other transportation departments in lieu of receiving their payment from the contractor.

§ 170.918 What applies to the Secretaries' collection of data under the TTP?

(a) Under 23 U.S.C. 201(c)(6)(A), the Secretaries will collect and report data necessary to implement the TTP in accordance with ISDEAA, including, but not limited to:

(1) Inventory and condition information on Tribal transportation facilities; and

(2) Bridge inspection and inventory information on any Federal bridge open to the public.

(b) In addition, under 23 U.S.C. 201(c)(6)(C), any entity that carries out a project under the TTP is required to provide the data identified in § 170.240.

Tribal Transportation Departments

§ 170.930 What is a Tribal transportation department?

A Tribal transportation department is a department, commission, board, or official of any Tribal government charged by its laws with the responsibility for transportation-related responsibilities, including but not limited to, administration, planning, maintenance, and construction activities. Tribal governments, as sovereign nations, have inherent authority to establish their own transportation departments under their own Tribal laws. Tribes may staff and organize transportation departments in any manner that best suits their needs. Tribes can receive technical assistance from TTACs, BIA regional road engineers, FHWA, or AASHTO to establish a Tribal transportation department.

§ 170.931 Can Tribes use TTP funds to pay Tribal transportation department operating costs?

Yes. Tribes can use TTP funds to pay the cost of planning, administration, and performance of approved TTP activities (see § 170.116). Tribes can also use BIA road maintenance funds to pay the cost of planning, administration, and performance of maintenance activities under this part.

§ 170.932 Are there other funding sources for Tribal transportation departments?

There are many sources of funds that may help support a Tribal transportation department. The following are some examples of additional funding sources:

(a) Tribal general funds;

(b) Tribal Priority Allocation;

(c) Tribal permits and license fees;

(d) Tribal fuel tax;

(e) Federal, State, private, and local transportation grants assistance;

(f) Tribal Employment Rights Ordinance fees (TERO); and

(g) Capacity building grants from Administration for Native Americans and other organizations.

§ 170.933 Can Tribes regulate oversize or overweight vehicles?

Yes. Tribal governments can regulate travel on roads under their jurisdiction and establish a permitting process to regulate the travel of oversize or overweight vehicles, under applicable Federal law. BIA may, with the consent of the affected Tribe, establish a permitting process to regulate the travel of oversize or overweight vehicles on the BIA road system.

Resolving Disputes

§ 170.934 Are alternative dispute resolution procedures available?

(a) Federal agencies should use mediation, conciliation, arbitration, and other techniques to resolve disputes brought by TTP beneficiaries. The goal of these alternative dispute resolution (ADR) procedures is to provide an inexpensive and expeditious forum to resolve disputes. Federal agencies should resolve disputes at the lowest possible staff level and in a consensual manner whenever possible.

(b) Except as required in 25 CFR part 900 and part 1000, Tribes operating under a self-determination contract or self-governance agreement are entitled to use dispute resolution techniques prescribed in:

(1) The ADR Act, 5 U.S.C. 571–583;

(2) The Contract Disputes Act, 41 U.S.C. 601–613; and

(3) The ISDEAA and the implementing regulations (including for non-construction the mediation and alternative dispute resolution options listed in 25 U.S.C. 4501 (model contract section (b)(12)).

(4) Tribes operating under a Program Agreement with FHWA are entitled to use dispute resolution techniques prescribed in 25 CFR 170.934 and Article II, Section 4 of the Agreement.

§ 170.935 How does a direct service Tribe begin the alternative dispute resolution process?

(a) To begin the ADR process, a direct service Tribe must write to the BIA Regional Director, or the Chief of BIA Division of Transportation. The letter must:

(1) Ask to begin one of the ADR procedures in the Administrative Dispute Resolution Act of 1996, 5 U.S.C. 571–583 (ADR Act); and

(2) Explain the factual and legal basis for the dispute.

(b) ADR proceedings will be governed by procedures in the ADR Act and the implementing regulations.

Other Miscellaneous Provisions

§ 170.941 May Tribes become involved in transportation research?

Yes. Tribes may:

(a) Participate in Transportation Research Board meetings, committees, and workshops sponsored by the National Science Foundation;

(b) Participate in and coordinate the development of Tribal and TTP transportation research needs;

(c) Submit transportation research proposals to States, FHWA, AASHTO, and FTA;

(d) Prepare and include transportation research proposals in their TTPTIPS;

(e) Access Transportation Research Information System Network (TRISNET) database; and

(f) Participate in transportation research activities under Intergovernmental Personnel Act agreements.

§ 170.942 Can a Tribe use Federal funds for transportation services for quality-of-life programs?

(a) A Tribe can use TTP funds:

(1) To coordinate transportation-related activities to help provide access to jobs and make education, training, childcare, healthcare, and other services more accessible to Tribal members; and

(2) As the matching share for other Federal, State, and local mobility programs.

(b) To the extent authorized by law, additional grants and program funds are available for the purposes in paragraph (a)(1) of this section from other programs administered by the Departments of Transportation, Health and Human Services, and Labor.

(c) Tribes should also apply for Federal and State public transportation and personal mobility program grants and funds.

Dated: October 7, 2016.

Lawrence S. Roberts,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 2016–26141 Filed 11–4–16; 8:45 am]

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FEDERAL REGISTER

Vol. 81 Monday,

No. 215 November 7, 2016

Part VI

The President

Notice of November 3, 2016—Continuation of the National Emergency With Respect to Iran

Federal Register
Vol. 81, No. 215
Monday, November 7, 2016

Presidential Documents

Title 3—

The President

Notice of November 3, 2016

Continuation of the National Emergency With Respect to Iran

On November 14, 1979, by Executive Order 12170, the President declared a national emergency with respect to Iran and, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), took related steps to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the situation in Iran. Our relations with Iran have not yet returned to normal, and the process of implementing the agreements with Iran, dated January 19, 1981, is still under way. For this reason, the national emergency declared on November 14, 1979, must continue in effect beyond November 14, 2016. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to Iran declared in Executive Order 12170.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
November 3, 2016.

[FR Doc. 2016–27033
Filed 11–4–16; 11:15 am]
Billing code 3295–F7–P

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