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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 315

RIN 3206–AM64

Career and Career-Conditional Employment

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is issuing a final rule on creditable service for career tenure. The final regulation removes the requirement for creditable service to be *substantially continuous* and instead allows an individual to attain career tenure after completing at least 3 years of *total* creditable service.

DATES: Effective December 8, 2016.

FOR FURTHER INFORMATION CONTACT: Cathy Thornton by telephone at (202) 418–4321; by TTY at (202) 418–3134; by fax at (202) 606–4430; or by email to *cathryn.thornton@opm.gov.*

SUPPLEMENTARY INFORMATION: On January 6, 2014, the Office of Personnel Management (OPM) proposed regulations at 79 FR 610 to revise part 315, title 5, Code of Federal Regulations (CFR), to change the criteria for career tenure in the Federal competitive service. The current regulations require an employee to serve a 3-year period of *substantially continuous* creditable service to attain career tenure. With certain exceptions, the current regulations also require a career-conditional employee who separates from Federal service to restart the 3-year period if there is a break in service of more than 30 days.

This final rule removes ''substantially continuous'' from the requirement for career tenure. Under this final rule, an individual may attain career tenure after completing at least 3 years of *total* creditable service as described in section 315.201(b). Each period of creditable service would stand alone. Once the employee accumulates 3 years of creditable service, he/she would be converted to career tenure. This change also removes the basis for the 30-day break-in-service rule. Because each period of creditable service would stand alone, breaks in service are now irrelevant.

This final rule also makes conforming changes to section 315.201(b) and removes references to outdated and obsolete appointing authorities.

Comments

OPM received 12 sets of comments in response to the proposed rule. Eleven individuals and one professional organization provided comments. All 11 individuals supported the proposed changes. A discussion of the comments follows.

One individual suggested the final rule apply to term appointments. OPM is not adopting this suggestion because term appointments are not career or career-conditional appointments and thus do not count towards career tenure. However, creditable service for these purposes may include service on certain overseas limited term appointments under 5 CFR part 301, in accordance with section 315.201(b)(1)(i), and certain term appointments served in accordance with 315.201(b)(3)(iv).

Another individual asked how this rule will impact persons employed as overseas family members. For these purposes creditable service may begin, but not end, with an overseas limited appointment of indefinite duration or an overseas limited term appointment under 5 CFR part 301 in accordance with § 315.201(b)(1)(i).

Another commenter suggested that the final rule allow time under excepted service appointments to count as creditable service towards the attainment of career tenure. OPM is not adopting this suggestion. Generally speaking, career tenure is acquired through service on a permanent appointment in the competitive service that provides or leads to competitive status. Excepted service appointments, in general, do not lead to or provide competitive status. However, for these purposes creditable service may begin with an excepted service appointment that leads to non-competitive conversion to the competitive service. Readers can find a list of qualifying excepted service appointments in 5 CFR 315.201(b).

One commenter asked that OPM consider similar rules for purposes of annual leave accrual. OPM is not adopting this suggestion because it is the beyond the scope of the proposed rule.

The professional organization provided a comment pertaining to suicide prevention, which was beyond the scope of the proposed rule.

OPM is adopting the proposed rule as final without any changes.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would apply only to Federal agencies and employees.

Paperwork Reduction Act

The information collection requirements contained in this proposed rule are currently approved by the Office of Management and Budget under 3206–A120. This regulation does not modify this approved collection.

List of Subjects in 5 CFR Part 315

Government employees.

U.S. Office of Personnel Management.

Beth F. Cobert,

Acting Director.

Accordingly, OPM amends 5 CFR part 315 as follows:

PART 315—CAREER AND CAREER-CONDITIONAL EMPLOYMENT

■ 1. The authority citation for part 315 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp. p. 218, unless otherwise noted; and E.O. 13562. Secs. 315.601 and 315.609 also issued under 22 U.S.C. 3651 and 3652. Secs. 315.602 and 315.604 also issued under 5 U.S.C. 1104. Sec. 315.603 also issued under 5 U.S.C. 8151. Sec. 315.605 also issued under E.O. 12034, 3 CFR, 1978 Comp. p. 111. Sec. 315.606 also issued under E.O. 11219, 3 CFR, 1964–1965 Comp. p. 303. Sec. 315.607 also issued under 22 U.S.C. 2506. Sec. 315.608 also issued under E.O. 12721, 3 CFR, 1990 Comp. p. 293. Sec. 315.610 also issued under 5 U.S.C. 3304(c).

Sec. 315.611 also issued under 5 U.S.C. 3304(f). Sec. 315.612 also issued under E.O. 13473. Sec. 315.710 also issued under E.O. 12596, 3 CFR, 1987 Comp. p. 229. Subpart I also issued under 5 U.S.C. 3321, E.O. 12107, 3 CFR, 1978 Comp. p. 264.

■ 2. In § 315.201, revise paragraphs (a) and (b) to read as follows:

§ 315.201 Service requirement for career tenure.

(a) *Service requirement.* A person employed in the competitive service for other than temporary, term, or indefinite employment is appointed as a career or career-conditional employee subject to the probationary period required by subpart H of this part. Except as provided in paragraph (c) of this section, an employee must serve at least 3 years of creditable service as defined in paragraph (b) of this section to become a career employee.

(b) *Creditable service.* Unless otherwise approved by OPM, the service required for career tenure must include service as described in paragraph (b)(1) of this section and total at least 3 years.

(1) *Nontemporary employment.* To be creditable, the 3 years of service must begin with one of the following:

(i) Nontemporary appointment in the competitive service: For this purpose, nontemporary appointment includes a career-conditional appointment. The 3 years may also begin, but not end, with status quo employment under subpart G of part 316 of this chapter, an overseas limited appointment of indefinite duration, or an overseas limited term appointment under part 301 of this chapter. The 3 years also may have begun with permanent employment under now obsolete appointing authorities such as probational, war service indefinite, emergency indefinite, nontemporary appointment from a civil service register to a position in the excepted service before January 23, 1955, temporary appointment pending establishment of a register (also known as TAPER authority), nontemporary appointment to a position in the District of Columbia Government before January 23, 1955, and appointment based on Public Law 83–121. Determinations of whether an obsolete authority provides the basis for creditable service may be obtained from OPM;

(ii) Nontemporary appointment to an excepted position, provided the employee's excepted position was brought into the competitive service and, on that basis, the employee acquired competitive status or was converted to a career-conditional appointment;

(iii) Nontemporary appointment to a nonappropriated fund (NAF) position in or under the Department of Defense or in or under the U.S. Coast Guard, Department of Homeland Security, provided the employee's NAF position was brought into the competitive service and, on that basis, the employee acquired competitive status or was converted to a career or career-conditional appointment;

(iv) Nontemporary excepted or nonappropriated fund appointment, Foreign Service appointment, or appointment in the Canal Zone Merit System, provided the employee is appointed to a competitive service position under the terms of an interchange agreement with another merit system under § 6.7 of this chapter, under Executive Order 11219 as amended by Executive Order 12292, or under Executive Order 11171;

(v) The date of appointment to a position on the White House Staff or in the immediate office of the President or Vice President, provided the service has been continuous and the individual was appointed to a competitive service position under § 315.602 of this chapter;

(vi) The date of nontemporary excepted appointment under § 213.3202(b) of this chapter (the former Student Career Experience Program) as in effect immediately before July 10, 2012, the effective date of the regulations removing that paragraph, provided the student's appointment was converted to a career or career-conditional appointment under Executive Order 12015 or under Executive Order 13562, with or without an intervening term appointment, and without a break in service of one day;

(vii) The date of veterans recruitment appointment (VRA), provided the appointment is converted to a career or career-conditional appointment under § 315.705 of this chapter, or the person is appointed from a civil service register without a break in service while serving under a VRA;

(viii) The date of nontemporary appointment to the Postal Career Service or the Postal Regulatory Commission after July 1, 1971, provided the individual is appointed to a career or career-conditional appointment under 39 U.S.C. 1006;

(ix) The date of nontemporary appointment under Schedule A, § 213.3102(u) of this chapter, of a person with an intellectual disability, severe physical disability, or a psychiatric disability, provided the employee's appointment is converted to a career or career-conditional appointment under § 315.709;

(x) The date of appointment in the Presidential Management Fellows Program under the provisions of Executive Order 13318, provided the employee's appointment was converted without a break in service to a career or career-conditional appointment under § 315.708 as in effect immediately before July 10, 2012, the effective date of the regulations that removed and reserved that section, or under Executive Order 13562;

(xi) The starting date of active service as an administrative enrollee in the United States Merchant Marine Academy;

(xii) Appointment as a career intern under Schedule B, § 213.3202(o) of this chapter, provided the employee's appointment was converted to a career or career-conditional appointment under § 315.712 as in effect immediately before July 10, 2012, the effective date of the regulations that removed and reserved that section;

(xiii) The date of appointment as a Pathways Participant in the Internship Program under Schedule D, § 213.3402(a) of this chapter, provided the employee's appointment is converted to a career or career-conditional appointment under § 315.713(a), with or without an intervening term appointment, and without a break in service of one day;

(xiv) The date of appointment as a Pathways Participant in the Recent Graduates Program under Schedule D, § 213.3402(b) of this chapter, provided the employee's appointment is converted to a career or career-conditional appointment under § 315.713(b), with or without an intervening term appointment, and without a break in service of one day;

(xv) The date of appointment as a Pathways Participant in the Presidential Management Fellows Program under Schedule D, § 213.3402(c) of this chapter, provided the employee's appointment is converted to a career or career-conditional appointment under § 315.713(c), with or without an intervening term appointment, and without a break in service of one day; and

(xvi) Employment with the District of Columbia Government after January 1, 1980 (the date the District implemented an independent merit personnel system not tied to the Federal system), provided the person was a District employee on December 31, 1979, was converted to the District system on January 1, 1980, and is employed by nontemporary appointment in the competitive service.

(2) *Competitive status.* An individual may attain career tenure only when employed (or reemployed) in a permanent appointment in the competitive service that provides or leads to competitive status.

(3) *Crediting service.* An employee's creditable service must total at least 3 years, under the following conditions:

(i) *Work schedule.* (A) Full-time service, and part-time service on or after July 1, 1962, are counted as calendar time from the date of appointment to date of separation.

(B) Intermittent service on or after July 1, 1962, is counted as 1 day for each day an employee is in pay status, regardless of the number of hours for which the employee is actually paid on a given day. Agencies should consult the ''260-Day Work Year Chart'' in OPM's *Guide to Processing Personnel Actions* to convert intermittent days worked to calendar time. The service requirement may not be satisfied in less than 3 years of calendar time.

(ii) *Nonpay status on the rolls and time off the rolls.* An agency may not credit periods of nonpay status and time off the rolls except as follows:

(A) Credit the first 30 calendar days of each period of nonpay status on the rolls during full-time employment, or during part-time employment on or after July 1, 1962. On this same basis, a seasonal employee receives credit for the first 30 calendar days of each period of nonduty/nonpay status. Nonpay status in excess of 30 days is not creditable.

(B) Credit periods of nonpay status and time off the rolls incident to entry into and return from military service and return from defense transfer, provided the person is reemployed in Federal service during the period of his or her statutory or regulatory restoration or reemployment rights.

(C) Credit periods of nonpay status and time off the rolls incident to transfer to and return from an international organization, provided the person is reemployed in Federal service under subpart C of part 352 of this chapter.

(D) Credit periods of nonpay status during which an employee was eligible to receive continuation of pay or injury compensation from the Office of Workers' Compensation Programs. Also credit periods of time off the rolls during which an employee was eligible to receive injury compensation from the Office of Workers' Compensation Programs, provided the person is reemployed under part 353 of this chapter.

(E) Credit up to 30 calendar days for time off the rolls that follows separation by reduction in force of employees who are eligible for entry on the reemployment priority list under subpart B of part 330 of this chapter, provided the person is reemployed in Federal service during the period of his or her reemployment priority.

(F) Credit up to 30 calendar days for time off the rolls that follow involuntary separation without personal cause of employees who are eligible for a noncompetitive appointment based on an interchange agreement with another merit system under § 6.7 of this chapter, provided the person is employed in the competitive service under the agreement during the period of his or her eligibility.

(G) Credit periods of nonpay status incident to an assignment to a State, local, or Indian tribal government, institution of higher education, or other eligible organization provided the employee returns to a creditable appointment pursuant to an agreement established under subchapter VI of chapter 33, title 5, U.S.C., and part 334 of this chapter.

(iii) *Restoration based on unwarranted or improper actions.* Based on a finding made on or after March 30, 1966, that a furlough, suspension, or separation was unwarranted or improper, an employee restored to duty receives full calendar time credit for the period of furlough, suspension, or separation for which he or she is eligible to receive back pay. If the employee is restored to duty at a date later than the original adverse action, credit for intervening periods of nonpay status is given in accordance with other provisions of this subsection. If the employee had been properly separated from the rolls of the agency before a finding was made that the adverse action was unwarranted or improper, the correction and additional service credit given the employee may not extend beyond the date of the proper separation.

(iv) *Intervening service.* Certain types of service that ordinarily are not creditable are counted when they intervene between two periods of creditable service. Under these conditions, credit each period of service:

(A) In the excepted service of the Federal executive branch, including employment in nonappropriated fund positions in or under any Federal agency;

(B) Under temporary, term, or other nonpermanent employment in the Federal competitive service;

(C) In the Senior Executive Service;

(D) In the Federal legislative branch;

(E) In the Federal judicial branch;

(F) In the armed forces;

(G) In the District of Columbia Government through December 31, 1979. For an employee on the District rolls on December 31, 1979, who converted on January 1, 1980, to the District independent personnel system, credit is also given for service between January 1, 1980, and September 25, 1980. Otherwise, service in the District of Columbia Government on or after January 1, 1980, is not creditable as intervening service; and

(H) Performed overseas by family members, as defined by § 315.608 of this chapter.

* * * * *

[FR Doc. 2016–26888 Filed 11–7–16; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 112

[Docket No. APHIS–2008–0008]

RIN 0579–AD19

Viruses, Serums, Toxins, and Analogous Products; Packaging and Labeling

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; technical amendment.

SUMMARY: In a final rule published in the **Federal Register** on August 30, 2016, and effective on October 31, 2016, we amended the Virus-Serum-Toxin Act regulations to make veterinary biologics labeling requirements more consistent with current science and veterinary practice. However, we inadvertently removed a requirement for an indications statement that should appear on final container labels, carton labels, and enclosures. This document corrects that error.

DATES: Effective November 8, 2016.

FOR FURTHER INFORMATION CONTACT: Dr. Donna Malloy, Operational Support Section, Center for Veterinary Biologics, Policy, Evaluation, and Licensing, VS, APHIS, 4700 River Road, Unit 148, Riverdale, MD 20737; (301) 851–2352.

SUPPLEMENTARY INFORMATION: In a final rule [1] that was published in the **Federal Register** on August 30, 2016 (81 FR 59427, Docket No. APHIS–2008–0008), and effective on October 31, 2016, we amended the Virus-Serum-Toxin Act regulations to make veterinary biologics labeling requirements more consistent with current science and veterinary practice. Among other things, in 9 CFR part 112, we amended § 112.2(a)(5) to clarify that ''full instructions for the

[1] To view the final rule and supporting documents, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2008-0008.*

proper use of the product'' refers to vaccination schedules, revaccination schedules (if necessary), indications for use, target species, recommended age for vaccination, vaccination route(s), and product license restrictions prescribed by the Animal and Plant Health Inspection Service that have a bearing on product use. However, when we made that change, we inadvertently removed a requirement for an indications statement to appear on final container labels, carton labels, and enclosures. Therefore, we are amending § 112.2(a) to re-establish the requirement for an indications statement.

List of Subjects in 9 CFR Part 112

Animal biologics, Exports, Imports, Labeling, packaging and containers, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 112 as follows:

PART 112—PACKAGING AND LABELING

■ 1. The authority citation for part 112 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.4.

■ 2. Section 112.2 is amended by adding paragraph (a)(12) to read as follows:

§ 112.2 Final container label, carton label, and enclosure.

(a) * * *

(12) An indications statement to read, ''This product has been shown to be effective for the vaccination of healthy (insert name of species) __ weeks of age or older against __.'' *Provided,* That in the case of very small final container labels or carton, a statement as to where such information is to be found, such as ''See enclosure for complete directions,'' ''Full directions on carton,'' or comparable statement.

* * * * *

Done in Washington, DC, this 2nd day of November 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016–26936 Filed 11–7–16; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 10

[Docket No. FDA–2011–N–0697]

RIN 0910–AG26

Amendments to Regulations on Citizen Petitions, Petitions for Stay of Action, and Submission of Documents to Dockets

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is amending certain regulations relating to citizen petitions, petitions for stay of action (PSAs), and the submission of documents to the Agency. In particular, the final rule establishes new regulations to implement certain provisions of the Federal Food, Drug, and Cosmetic Act (the FD&C Act), which concern certain citizen petitions and PSAs that involve a request for FDA to take any form of action relating to a pending abbreviated new drug application (ANDA), 505(b)(2) application, or certain applications submitted under the Public Health Service Act (PHS Act). We are making these changes to implement provisions of the Food and Drug Administration Amendments Act of 2007 (FDAAA) and the Food and Drug Administration Safety and Innovation Act (FDASIA).

DATES: This rule is effective January 9, 2017.

ADDRESSES: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number (FDA–2011–N–0697) 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: Darren Eicken, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6206, Silver Spring, MD, 20993–0002, 240–402–0978.

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Executive Summary

Purpose of the Rule

This rule establishes new regulations implementing section 505(q) of the FD&C Act (21 U.S.C. 355(q)) as enacted by FDAAA (Pub. L. 110–85) and amended by FDASIA (Pub. L. 112–144). Section 505(q) of the FD&C Act governs the manner in which FDA handles certain citizen petitions and PSAs that ask the Agency to take any form of action related to an ANDA, a 505(b)(2) application, or an application submitted under section 351(k) of the PHS Act (351(k) application) (42 U.S.C. 262(k)). Section 505(q) of the FD&C Act specifies that FDA must not delay approval of a pending application because of any request to take any form of action relating to the application, unless the request is in writing and in a citizen petition or a PSA, and the Agency determines, upon reviewing the petition, that a delay is necessary to protect the public health. Section 505(q) of the FD&C Act also requires that all submitters of a petition (or PSA) include with their submission a verbatim certification statement specifying the date on which the information relied on in the petition first became known. Similarly, section 505(q) of the FD&C Act requires that the submitters of a supplement or a comment to a petition include with their submission a verbatim verification statement specifying the date on which the information relied on in their submission first became known. By enacting section 505(q) of the FD&C Act, Congress indicated a desire to ensure that petitions not be used to improperly delay approval of ANDAs, 505(b)(2) applications, or 351(k) applications. This rule clarifies the requirements of section 505(q) of the FD&C Act.

Summary of the Major Provisions of the Rule

This rule amends FDA's regulations on general administrative procedures in part 10 (21 CFR part 10).

In § 10.31, paragraph (a) states that § 10.31 applies to all citizen petitions and PSAs that request that the Agency take any action that could, if taken, delay approval of an ANDA, a 505(b)(2) application, or a 351(k) application (*i.e.*, petitions and PSAs that are or may be subject to section 505(q) of the FD&C Act). Section 10.31(b) clarifies that the date of submission for petitions submitted under § 10.31 is the date on which the petition is received by FDA's Division of Dockets Management.

The rule also codifies the certification and verification requirements of section 505(q) of the FD&C Act. Section 10.31(c) clarifies that the Agency will consider a certification deficient if every word in the petitioner's certification does not match every word of the certification provided in section 505(q)(1)(H) of the FD&C Act. Likewise, § 10.31(d) clarifies that the Agency will consider the verification deficient if every word in the petitioner's or commenter's verification does not match every word of the verification provided in section 505(q)(1)(I) of the FD&C Act. However, because we believe section 505(q)(1)(I) of the FD&C Act contains a technical error when it specifies the word ''petition'' in the last sentence of the verification, we will accept either the word ''petition'' or ''document'' in the last sentence of the petitioner's or commenter's verification.

The rule also amends §§ 10.30 and 10.35. Section 10.30(e)(5) states that FDA intends to respond to a petition subject to section 505(q) of the FD&C Act within 150 days after the date on which the petition is received. This amendment incorporates a statutory change enacted by FDASIA. In addition, § 10.35(i) clarifies that a petitioner requesting a stay of action may supplement, amend, or withdraw a PSA, similar to the provision for citizen petitions in current § 10.30(g). Finally, §§ 10.30(e)(3) and 10.35(e) are amended to reflect that the Commissioner of Food and Drugs (the Commissioner) may dismiss a petition if changes in law, facts, or circumstances since the date on which the petition was submitted render the petition moot.

Costs and Benefits

We estimate one-time costs to industry from this rule at about $613,800. We estimate annual costs at about $1,700. These costs equate to an estimated total annualized cost of about $89,100 at a 7 percent discount rate over 10 years and about $73,700 at a 3 percent discount rate over 10 years. The total annualized costs include the administrative cost to review the rule ($87,400) plus the cost for the additional effort preparing certifications for petitions and verifications for both responses to petitions and supplements to petitions ($1,700).

By providing additional clarity on the statutory requirements, we expect the rule will slightly reduce the number of deficient 505(q) petitions, leading to lower administrative costs for both industry and FDA.

I. Background

In the **Federal Register** of January 3, 2012 (77 FR 25), FDA issued a proposed rule to amend certain regulations relating to citizen petitions, PSAs, and the submission of documents to the Agency, to implement provisions of section 505(q) of the FD&C Act. Section 505(q) of the FD&C Act governs certain citizen petitions and PSAs (collectively referred to as petitions) that ask FDA to take any form of action that could, if taken, delay approval of a pending application submitted under section 505(b)(2) or (j) of the FD&C Act or a pending application for licensure of a biological product as a biosimilar or interchangeable product that is submitted under section 351(k) of the PHS Act. An application submitted under section 505(b)(2) of the FD&C Act is a type of new drug application (NDA) described in that subsection and is referred to in this document as a ''505(b)(2) application.'' An application submitted under section 505(j) of the FD&C Act is an ANDA seeking approval for a generic drug product. An application submitted under section 351(k) of the PHS Act is referred to in this document as a ''351(k) application.''

Over the years, FDA has received numerous petitions asking the Agency not to approve a particular ANDA or 505(b)(2) application (or classes of these applications concerning a particular drug product or active ingredient) unless certain criteria set forth in the petition are met. In many cases, the petitions have raised scientific and/or legal issues relating to the standards for approval of an application. Examples include petitions suggesting a particular method for demonstrating the bioequivalence of a proposed generic product to the reference listed drug (RLD) and petitions maintaining that a proposed generic product does not contain the same active ingredient as the RLD. When submitted early, such as when we are making decisions about the bioequivalence requirements for a generic drug product or before we have received the first ANDA, 505(b)(2) application, or 351(k) application for a drug or biological product, a petition may contain information that can contribute towards our evaluation of an application. However, when petitions are submitted late in the review process for challenged applications and do not raise valid scientific and/or legal issues, they may have the effect of improperly delaying the approval of an application. By enacting section 505(q) of the FD&C Act, Congress indicated a desire to ensure that petitions not be used to improperly delay approval of ANDAs, 505(b)(2) applications, or 351(k) applications.

Scope of section 505(q) of the FD&C Act: FDAAA was enacted on September 27, 2007. Section 914 of Title IX of FDAAA added section 505(q) to the FD&C Act. Section 505(q) of the FD&C Act was subsequently amended by FDASIA on July 9, 2012.

Section 505(q)(1)(A) of the FD&C Act specifies that FDA must not delay approval of a pending ANDA, a 505(b)(2) application, or a 351(k) application because of any request to take any form of action relating to the application, unless the request is in writing and in a citizen petition submitted under § 10.30 or a PSA submitted under § 10.35, and the Agency determines, upon reviewing the petition, that a delay is necessary to protect the public health. In section 505(q)(5) of the FD&C Act the term *application* is defined as an application submitted under section 505(b)(2) or 505(j) of the FD&C Act or 351(k) of the PHS Act and the term *petition* is defined as a request defined in section 505(q)(1)(A)(i).

Section 505(q)(1)(B) of the FD&C Act states in this context that if FDA determines that a delay of approval of an ANDA, a 505(b)(2) application, or a 351(k) application is necessary to protect the public health, FDA is required to provide to the applicant not later than 30 days after making the determination (1) notification that the determination has been made; (2) if applicable, any clarification or additional data that the applicant should submit to the petition docket to allow FDA to review the petition promptly; and (3) a brief summary of the specific substantive issues raised in the petition that form the basis of FDA's determination. At FDA's discretion, the information is to be conveyed either in writing or in a meeting with the applicant. The information conveyed in the notification is to be considered part of the application and is subject to the disclosure requirements applicable to information in the application.

Section 505(q)(1)(F) of the FD&C Act governs the timeframe for final Agency action on a petition. Under this provision, FDA must take final Agency action on a petition not later than 150

days after the date on which the petition is submitted. The 150-day period is not to be extended for any reason, including any determination made under section 505(q)(1)(A) of the FD&C Act regarding delay of approval of an application (*i.e.*, that delay is necessary to protect the public health), the submission of comments or supplemental information, or the consent of the petitioner. In addition, FDA may deny a petition at any point if it determines that a petition or a supplement to the petition was submitted with the primary purpose of delaying the approval of an application and the petition does not on its face raise valid scientific or regulatory issues (section 505(q)(1)(E) of the FD&C Act).

Section 505(q) of the FD&C Act also includes certification and verification requirements for certain documents. Under section 505(q)(1)(H) of the FD&C Act, FDA may not consider a petition for review unless the petition is in writing and is signed and contains a certification that is specified in that section. Section 505(q)(1)(H) of the FD&C Act sets forth the exact words to be used in the certification. In addition, FDA may not accept for review any supplemental information or comments on a petition unless the submission is in writing and is signed and contains a specific verification. Section 505(q)(1)(I) of the FD&C Act sets forth the exact words to be used in the verification.

Section 505(q)(2) of the FD&C Act governs judicial review of final Agency action on a petition subject to section 505(q). Under section 505(q)(2)(A) of the FD&C Act, FDA will be considered to have taken final Agency action on a petition if FDA makes a final decision within the meaning of § 10.45(d) during the 150-day period, or the 150-day period expires without FDA having made a final decision. Under section 505(q)(2)(B) of the FD&C Act, if a civil action is filed against the Secretary with respect to any issues raised in the petition before final Agency action, a court shall dismiss the action without prejudice for failure to exhaust administrative remedies. Section 505(q)(2) of the FD&C Act, however, does not apply to a petition containing requests relating to a 351(k) application.

II. Overview of the Final Rule, Including Significant Changes to the Proposed Rule

A. Overview

In this rulemaking, the Agency finalizes the provisions outlined in the January 2012 proposed rule. In addition, the final rule incorporates changes enacted by FDASIA and responds to comments made to the proposed rule. FDA also is making editorial and organizational changes to clarify provisions. The final rule amends part 10 of FDA regulations on general administrative procedures. The amendment adds § 10.31, which includes the following provisions:

- Section10.31(a) states that § 10.31 will encompass all citizen petitions and PSAs that request that the Agency take any action that could, if taken, delay approval of an ANDA, a 505(b)(2) application, or a 351(k) application (*i.e.*, petitions and PSAs that are or may be subject to section 505(q) of the FD&C Act).
- Section 10.31(b) clarifies the date of submission for petitions submitted under § 10.31.
- Section 10.31(c) and (d) codify the certification and verification requirements of section 505(q)(1)(H) and (I) of the FD&C Act. Section 10.31(c) clarifies that the Agency will consider a certification deficient if every word in the petitioner's certification does not match every word of the certification provided in section 505(q)(1)(H) of the FD&C Act. Likewise, § 10.31(d) clarifies that the Agency will consider the verification deficient if every word in the petitioner's or commenter's verification does not match every word of the verification provided in section 505(q)(1)(I) of the FD&C Act. As discussed in section II.B.4 of the preamble to the proposed rule, we are making one minor editorial change to the language of the verification set out in the statute. We are changing ''I verify under penalty of perjury that the foregoing is true and correct as of the date of this *petition*'' to ''I verify under penalty of perjury that the foregoing is true and correct as of the date of this *document*'' (emphasis added). Because the statute specifies the word ''petition'', we will accept either ''petition'' or ''document'' in the last sentence of the verification. In addition, section 505(q) of the FD&C Act requires both the certification and verification to be signed and executed under penalty of perjury. FDA interprets the signature provision to require a handwritten or electronic signature by the person whose name appears as the signatory to the petition, supplement, or comment. If the certification or verification is signed by another person with the notation ''for,'' signature/[initials], ''on behalf of,'' or with similar notation that indicates one person signed for another, we will consider the certification or verification to be deficient and will not consider the petition for review.

The final rule amends §§ 10.20, 10.30, and 10.35 as follows:

- Adds § 10.30(e)(5) to incorporate a statutory change enacted by FDASIA. New § 10.30(e)(5) states that FDA intends to respond to a petition subject to section 505(q) of the FD&C Act within 150 days after the date on which the petition is received.
- Revises § 10.30(e)(2) to conform with the addition of § 10.30(e)(5).
- Makes minor revisions to §§ 10.20 and 10.30 to conform to the addition of § 10.31.
- With respect to § 10.35, administrative stay of action, makes revisions to conform with the implementation of section 505(q) of the FD&C Act. The final rule also adds new § 10.35(i) to clarify that a petitioner requesting a stay of action may supplement, amend, or withdraw a PSA, similar to the provision for citizen petitions in current § 10.30(g).

In addition to implementing the provisions in section 505(q) of the FD&C Act, the final rule makes minor technical changes by revising §§ 10.30(e)(3) and 10.35(e) to allow the Commissioner to dismiss a petition if changes in law, facts, or circumstances since the date on which the petition was submitted render the petition moot.

B. Significant Changes to the Proposed Rule

The final rule reflects revisions to the proposed rule in response to the enactment of FDASIA. Section 1135 of FDASIA amended section 505(q) of the FD&C Act in several ways. First, it shortened from 180 days to 150 days FDA's deadline for responding to petitions subject to section 505(q) of the FD&C Act. Second, it expanded the scope of section 505(q) of the FD&C Act to include certain petitions related to 351(k) applications. Lastly, FDASIA also added section 505(q)(4)(B) of the FD&C Act, which excludes such petitions from section 505(q)(2).

Accordingly, the final rule includes the following changes to the proposed rule:

- Adds § 10.30(e)(5) and revises § 10.30(e)(2) to reflect FDA's 150-day deadline for responding to petitions subject to section 505(q) of the FD&C Act.
- Revises § 10.31(a)(1) to reflect the applicability of section 505(q) of the FD&C Act to 351(k) applications.

These changes conform the final rule to reflect amendments to section 505(q) of the FD&C Act enacted by FDASIA that became law after publication of the proposed rule.

III. Comments on the Proposed Rule and FDA Responses

A. Introduction

We received one submission containing several comments from the Pharmaceutical Research and Manufacturers of America (PhRMA). These comments primarily focused on the scope of proposed § 10.31 and the certification and verification requirements. PhRMA also raised several issues we deemed outside the scope of the proposed rule. In the discussion that follows, we address the comments.

We describe and respond to the comments in sections III.B through III.E. We have numbered each comment to help distinguish between different comments. The number assigned to each comment is purely for organizational purposes and does not signify the comment's value or importance or the order in which comments were received.

B. Scope of the Proposed Rule (§ 10.31)

(Comment 1) We received a comment from PhRMA concerning the scope of the rule. PhRMA stated that, in some instances, the rule would require unnecessary certifications for petitions outside the scope of section 505(q) of the FD&C Act that could cause confusion among petitioners, commentators, and the courts regarding which rules to apply to any given petition. PhRMA claimed the proposed rule could compromise a petitioner's fundamental right to know which statutory requirements and timelines FDA will apply to the petition. Accordingly, PhRMA requested that FDA revise the proposed rule to limit the rule's application to cases in which there is evidence that a relevant ANDA or 505(b)(2) application is pending before FDA.

(Response 1) We decline to make this revision. Normally, the existence of a pending application is not made public by FDA. (See *e.g.*, 21 CFR 314.430.) To prevent uncertainty as to when a certification or verification is required and to protect against the unintended release of information acknowledging the existence of an ANDA, a 505(b)(2) application, or a 351(k) application, we are making § 10.31 apply to all petitions that request an action that could delay the approval of an ANDA, a 505(b)(2) application, or a 351(k) application, regardless of whether an application subject to the petition's requested action is pending at the time the petition is submitted. Otherwise, if petitioners were to omit the certification statement and wait for FDA to inform them that the certification is required (because of the existence of a pending application), the filing of petitions could become a way for individuals to uncover the existence of certain pending applications. Neither FDAAA nor FDASIA suggest such an outcome. Moreover, rather than causing confusion, as PhRMA suggests, we believe that requiring certifications and verifications for all applicable petitions would remove any uncertainty as to whether a petitioner should submit or not submit a certification or verification. If there is no related ANDA, 505(b)(2) application, or 351(k) application pending at the time the petition is submitted, then the requirements of § 10.31 will apply to the petition, but we will not consider the provisions of section 505(q) of the FD&C Act to apply to the petition.

C. Certification and Verification Requirements

(Comment 2) PhRMA expressed specific concerns regarding the certification and verification requirements of the rule. First, PhRMA requested that the discretionary language found in the preamble to the proposed rule, *i.e.*, ''[t]he failure to provide any information relied upon (and the date) in the certification or verification may result in the failure of FDA to consider that information . . . .'', be clarified to prevent confusion over how FDA intends to interpret and implement the certification and verification requirements. Second, PhRMA questioned FDA's assertion that a failure to certify or verify a ''became known'' date would foreclose a petitioner from relying on that information when seeking judicial review. Accordingly, PhRMA requested that FDA: (1) Revise the proposed rule and provide additional explanation and examples to clarify what types of information petitioners must provide ''became known'' dates for and (2) ''provide support for, modify, or expressly withdraw'' the preamble statement concerning judicial review.

(Response 2) We recognize that a petition, supplement, or comment could be based on more than one type of information or multiple pieces of information. Section 505(q) of the FD&C Act requires that the petitioner provide in the certification the date on or about which information first became known to the petitioner. We interpret section 505(q) of the FD&C Act to require an on or about date for each piece of information that is relied upon in the petition. Section II.B.7 of the preamble to the proposed rule provides an example illustrating how a petition may list different types of information. A petition, supplement, or comment will meet the certification/verification requirement if it contains a date followed by a short description of the information. This requirement is essential to carrying out the legislative intent of Congress and does not impose an unreasonable burden on petitioners. Because of the fact-based nature of a petition, it is impracticable for FDA to specifically define or categorize all types of information that may be relied upon by a petitioner. A petitioner or commenter can, however, reasonably be expected to identify the main categories of information on which the petition, supplement, or comment relies and to provide dates for such categories. Indeed, this interpretation of the certification has worked well to date. The failure to certify or verify a ''became known'' date for any item of information contained in a petition would preclude the petitioner from relying on that information when seeking judicial review since section 505(q)(1)(H) and (I) of the FD&C Act requires that FDA not consider and/or accept for review any petition or information that fails to meet the certification and verification requirements.

D. Nonretroactivity of the Rule

(Comment 3) PhRMA expressed concern that the rule could be read as retroactively imposing requirements on petitions filed after September 26, 2007, but before the effective date of the final rule. Based on its concern, PhRMA requested that FDA revise the rule to clarify that § 10.31 will not apply to any petition that was pending at FDA before the final rule's effective date, to any supplement to such a petition, or to any comments on such a petition.

(Response 3) FDA's guidance for industry ''Citizen Petitions and Petitions for Stay of Action Subject to Section 505(q) of the Federal Food, Drug, and Cosmetic Act'' (Ref. 1), describes FDA's current thinking on the applicability of section 505(q) to petitions submitted after September 27, 2007. As that guidance notes, section 505(q) of the FD&C Act applies to all petitions that are submitted on or after September 27, 2007 (or July 9, 2012, if the subject matter of the petition relates to the approval of a 351(k) application). To the extent the final rule imposes any additional requirements, those requirements will apply only to those petitions submitted on or after the effective date of the final rule.

E. Additional Comments

(Comment 4) PhRMA requested that FDA include or otherwise establish a

mechanism for notifying a petitioner if the Agency determines that a delay of approval of an ANDA or 505(b)(2) application is not necessary to protect the public health.

(Response 4) We decline to implement such a mechanism for notifying petitioners. As PhRMA pointed out, section 505(q) of the FD&C Act does not require such a notification. The only notification provision in section 505(q) of the FD&C Act is found in section 505(q)(1)(B), which requires FDA to inform an ANDA applicant, a section 505(b)(2) applicant, or a 351(k) applicant that a delay in approval is necessary to protect the public health. Moreover, such a notification mechanism would be burdensome for the Agency and could inadvertently inform the public of pending ANDAs, 505(b)(2) applications, or 351(k) applications.

(Comment 5) PhRMA requested that FDA issue a regulation establishing (or clarifying) the administrative consequence of a decision to approve an ANDA or a 505(b)(2) application prior to making a final decision on a related 505(q) petition (*i.e.*, whether such an approval would be considered a denial of the petition under section 505(q)(2)(A)(i) of the FD&C Act).

(Response 5) We believe the statute clearly defines what constitutes an exhaustion of administrative remedies with regard to section 505(q) petitions. Section 505(q)(2) of the FD&C Act governs judicial review of final Agency action on certain petitions filed under section 505(q). Under section 505(q)(2)(A) of the FD&C Act, FDA is considered to have taken final Agency action on a petition if either: (1) FDA makes a final decision within the meaning of § 10.45(d) during the 150-day period or (2) the 150-day period expires without FDA making a final decision. Section 505(q)(2) of the FD&C Act is silent as to the effect of approving an ANDA or a 505(b)(2) application prior to FDA's action on a petition. In our view, the language of section 505(q)(2) of the FD&C Act is clear and decouples a final action on a petition from a decision on an underlying ANDA or 505(b)(2) application. (We note that petitions addressing issues concerning 351(k) applications are excluded from the scope of section 505(q)(2) of the FD&C Act). Therefore, a decision on an ANDA or a 505(b)(2) application that occurs prior to the issuance of a petition response will not constitute final Agency action on the petition.

(Comment 6) PhRMA requested that FDA issue a regulation establishing (or clarifying) that a delay in approval of an ANDA or a 505(b)(2) application can extend beyond the 180-day (now 150-day) review period for a petition.

(Response 6) We decline to issue a regulation establishing or clarifying that a delay in approval of an ANDA or a 505(b)(2) application can exceed the 150-day review period for petitions. Because of the uncertainty in predicting the time it will take to resolve a particular issue, establishing an expectation on the possible length of a delay would be neither practical nor feasible. We believe that based on the language of section 505(q) of the FD&C Act, no clarification is necessary.

(Comment 7) Finally, PhRMA requested that FDA abandon its practice of not providing a substantive response to every section 505(q) petition regardless of the review status of a pending ANDA or 505(b)(2) application.

(Response 7) This issue is outside the scope of this rulemaking. FDA's current thinking on this issue is outlined in section III.E of its guidance for industry ''Citizen Petitions and Petitions for Stay of Action Subject to Section 505(q) of the Federal Food, Drug, and Cosmetic Act'' (Ref. 1), and we do not believe further elaboration is necessary.

IV. Legal Authority

This rule amends §§ 10.20, 10.30, and 10.35, and adds § 10.31 in a manner consistent with the Agency's current understanding and application of these provisions. FDA is implementing certain provisions of FDAAA and FDASIA that govern petitions subject to section 505(q) of the FD&C Act. FDA has authority to issue regulations for the efficient administration of these provisions under section 701(a) of the FD&C Act (21 U.S.C. 371(a)).

V. Analysis of Environmental Impact

FDA has 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.

VI. Economic Analysis of Impacts

A. Introduction and Summary

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 (Ref. 2). We believe that this final rule is not a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the annualized compliance costs to industry members, including small entities, is estimated to be slightly above $100, we certify 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.

B. Summary of Final Regulatory Impacts Analysis

1. Industry Costs

We estimate one-time costs to industry from this final rule at about $626,300. We estimate annual costs at about $1,800. These costs equate to an estimated total annualized cost of about $91,000 at a 7 percent discount rate over 10 years and about $75,200 at a 3 percent discount rate over 10 years. The total annualized costs include the administrative cost to review the rule ($89,200) plus the cost for the additional effort preparing certifications for petitions and verifications for both responses to petitions and supplements to petitions ($1,800).

2. Benefits

The final rule contains several clarifications to the language provided in FDAAA and small additions to the statute's provisions. It reinforces the need for exact wording of both the certification and verification statements for petitions, supplements to petitions, and responses to petitions. Furthermore,

the rule clarifies the exact dating procedures for these documents. By providing additional clarity on the statutory requirements, we expect the final rule will slightly reduce the number of deficient 505(q) petitions. We do not have enough information to estimate this reduction in deficient 505(q) petitions, but the reduction should result in lower administrative costs for both industry and FDA.

The Economic Analysis of Impacts of the final rule, performed in accordance with Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act, and the Unfunded Mandates Reform Act, is available at *http://www.regulations.gov* under the docket number for this final rule (FDA–2011–N–0697) and at *http://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/default.htm.*

VII. Paperwork Reduction Act of 1995

This final rule contains no new information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (the PRA). The final rule refers to previously approved collections of information found in FDA regulations. The collections of information in §§ 10.30 and 10.35 have been approved under OMB control number 0910–0191. The collections of information in § 10.31 have been approved under OMB control number 0910–0679. The collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001. The certification and verification statements required under § 10.31(c) and (d) are ''public disclosure[s] of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public . . . ,'' (5 CFR 1320.3(c)(2)) and therefore not subject to OMB review.

VIII. 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.

IX. 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. FDA Guidance for Industry, ''Citizen Petitions and Petitions for Stay of Action Subject to Section 505(q) of the Federal Food, Drug, and Cosmetic Act,'' November 2014, available at *http://www.fda.gov/ucm/groups/fdagov-public/@fdagov-drugs-gen/documents/document/ucm079353.pdf.*
2. Final Regulatory Impact Analysis, ''Amendments to Regulations on Citizen Petitions, Petitions for Stay of Action, and Submission of Documents to Dockets,'' Docket No. FDA–2011–N–0697, available at *http://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/default.htm.*

List of Subjects in 21 CFR Part 10

Administrative practice and procedure, News media.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 10 is amended as follows:

PART 10—ADMINISTRATIVE PRACTICES AND PROCEDURES

■ 1. The authority citation for part 10 continues to read as follows:

Authority: 5 U.S.C. 551–558, 701–706; 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–397, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201, 262, 263b, 264.

■ 2. In § 10.20, revise paragraph (e) to read as follows:

§ 10.20 Submission of documents to Division of Dockets Management; computation of time; availability for public disclosure.

* * * * *

(e) Except as provided in § 10.31(b), all submissions to the Division of Dockets Management will be considered as submitted on the date they are postmarked or, if delivered in person during regular business hours, on the date on which they are delivered, unless a provision in this part, an applicable **Federal Register** notice, or an order issued by an administrative law judge specifically states that the documents must be received by a specified date, *e.g.*, § 10.33(g) relating to a petition for reconsideration, in which case they will be submitted on the date received.

* * * * *

■ 3. Section 10.30 is amended as follows:
■ a. Revise paragraph (b) introductory text;
■ b. Revise the first sentence of paragraph (c);
■ c. Revise the second sentence of paragraph (d);
■ d. Revise the first sentence of paragraph (e)(2);
■ e. Remove from paragraph (e)(2)(ii) the word ''or'';
■ f. Redesignate paragraph (e)(2)(iii) as paragraph (e)(2)(iv);
■ g. Add new paragraph (e)(2)(iii);
■ h. Add to paragraph (e)(3) a new sentence after the first sentence; and
■ i. Add new paragraph (e)(5).

The additions and revisions read as follows:

§ 10.30 Citizen petition.

* * * * *

(b) A petition (including any attachments) must be submitted in accordance with § 10.20 and, if applicable, § 10.31. The certification requirement in this section does not apply to petitions subject to the certification requirement of § 10.31. The petition must also be submitted in accordance with the following paragraphs, as applicable:

* * * * *

(c) A petition that appears to meet the requirements of paragraph (b)(3) of this section, § 10.20, and, if applicable, § 10.31, will be filed by the Division of Dockets Management, stamped with the date of filing, and assigned a unique docket number. * * *

(d) * * * The comments are to specify the docket number of the petition and include, if applicable, the verification under § 10.31, and may support or oppose the petition in whole or in part. * * *

(e) * * *

(2) Except as provided in paragraphs (e)(4) and (5) of this section, the Commissioner shall furnish a response to each petitioner within 180 days of receipt of the petition. * * *

(iii) Dismiss the petition if at any time the Commissioner determines that changes in law, facts, or circumstances since the date on which the petition was submitted have rendered the petition moot; or

* * * * *

(3) * * * If, at any time, the Commissioner determines that changes in law, facts, or circumstances since the date on which the petition was submitted have rendered the petition

moot, the Commissioner may dismiss the petition. * * *

* * * * *

(5) The Commissioner intends to furnish a response to each petitioner within 150 days of receipt of a petition subject to section 505(q) of the Federal Food, Drug, and Cosmetic Act.

* * * * *

■ 4. Add § 10.31 to subpart B to read as follows:

§ 10.31 Citizen petitions and petitions for stay of action related to abbreviated new drug applications, certain new drug applications, or certain biologics license applications.

(a) *Applicability.* This section applies to a citizen petition or petition for stay of action that meets all of the following criteria:

(1) The petition requests that the Commissioner take any form of action that could, if taken, delay approval of an abbreviated new drug application submitted under section 505(j) of the Federal Food, Drug, and Cosmetic Act, a new drug application submitted through the pathway described by section 505(b)(2) of the Federal, Food, Drug and Cosmetic Act, or a biologics license application submitted under section 351(k) of the Public Health Service Act.

(2) The petition is submitted on or after September 27, 2007.

(3) The petition is submitted in writing and under § 10.30 (for citizen petitions) or § 10.35 (for petitions for stay of action).

(b) *Date of submission.* A petition subject to this section and submitted in accordance with § 10.20, § 10.30, § 10.31, or § 10.35 is regarded as submitted on the date on which the petition is received by the Division of Dockets Management.

(c) *Certification.* (1) FDA will not consider for review a petition that is subject to this section unless the petition is in writing and contains the following certification:

> I certify that, to my best knowledge and belief: (a) this petition includes all information and views upon which the petition relies; (b) this petition includes representative data and/or information known to the petitioner which are unfavorable to the petition; and (c) I have taken reasonable steps to ensure that any representative data and/or information which are unfavorable to the petition were disclosed to me. I further certify that the information upon which I have based the action requested herein first became known to the party on whose behalf this petition is submitted on or about the following date: _____[in the blank space, provide the date on which such information first became known to the person submitting the petition]. If I received or expect to receive payments, including cash and other forms of consideration, to file this information or its contents, I received or expect to receive those payments from the following persons or organizations: _____ [in the blank space, provide the names of such persons or organizations]. I verify under penalty of perjury that the foregoing is true and correct as of the date of the submission of this petition.

(2) The certification in paragraph (c)(1) of this section must contain one or more specific dates (month, day, and year) in the first blank space provided. If different categories of information become known at different times, the certification must contain each estimated relevant date. The information associated with a particular date must be identified.

(d) *Verification.* (1) FDA will not accept for review any supplemental information or comments on a petition that is subject to this section unless the supplemental information or comments are in writing and contain the following verification:

> I certify that, to my best knowledge and belief: (a) I have not intentionally delayed submission of this document or its contents; and (b) the information upon which I have based the action requested herein first became known to me on or about _____[in the blank space, provide the date on which such information first became known to the person submitting the document]. If I received or expect to receive payments, including cash and other forms of consideration, to file this information or its contents, I received or expect to receive those payments from the following persons or organizations: _____ [in the blank space, provide the names of such persons or organizations]. I verify under penalty of perjury that the foregoing is true and correct as of the date of the submission of this document.

(2) The verification in paragraph (d)(1) of this section must contain one or more specific dates (month, day, and year) in the first blank space provided. If different categories of information become known at different times, the verification must contain each estimated relevant date. The information associated with a particular date must be identified.

■ 5. In § 10.35 revise the third sentence of paragraph (b); in paragraph (e)

introductory text add a new sentence after the second sentence; and add paragraph (i) to read as follows:

§ 10.35 Administrative stay of action.

* * * * *

(b) * * * A request for stay must be submitted in accordance with § 10.20 and in the following form (except that a request for stay subject to § 10.31 must also include the certification provided in § 10.31(c)) no later than 30 days after the date of the decision involved. * * *

* * * * *

(e) * * * If, at any time, the Commissioner determines that changes in law, facts, or circumstances since the date on which the petition was submitted have rendered the petition moot, the Commissioner may dismiss the petition. * * *

* * * * *

(i) A petitioner may supplement, amend, or withdraw a petition for stay of action in writing without Agency approval and without prejudice to resubmission at any time until the Commissioner rules on the petition, provided the resubmission is made in accordance with paragraph (b) of this section, unless the petition for stay of action has been referred for a hearing under parts 12, 13, 14, or 15 of this chapter. After a ruling or referral, a petition for stay of action may be supplemented, amended, or withdrawn only with the approval of the Commissioner. The Commissioner may approve withdrawal with or without prejudice against resubmission of the petition for stay of action.

Dated: November 2, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–26912 Filed 11–7–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2016–0932]

RIN 1625–AA08

Special Local Regulation; Saint Andrew Bay; Panama City, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation on Saint Andrew Bay extending the entire width of the channel from mile marker 285.0 to mile marker 289.0 on the Gulf Intracoastal Waterway in Panama City, FL. The special local regulation is needed to protect the persons participating in the Boat Parade of Lights marine event. This rulemaking restricts transit into, through and within the regulated area unless specifically authorized by the Captain of the Port Mobile.

DATES: This rule is effective from 4 p.m. until 10 p.m. on December 10, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2016–0932 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Fannie L. Wilks, Sector Mobile, Waterways Management Division, U.S. Coast Guard; telephone 251–441–5940, email *Fannie.L.Wilks@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
PATCOM Patrol Commander
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. At this time, it would be impracticable to complete the full notice and comment process because this special local regulation must be established on December 10, 2016.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1233. The Captain of the Port Mobile (COTP) has determined that potential hazards associated with the regatta event on December 10, 2016 will be a safety concern for anyone within the area of the Gulf Intracoastal Waterway between mile marker 285.0 and mile marker 289.0. This rule is needed to protect participants, spectators, and other persons and vessels during the regatta on navigable waters.

IV. Discussion of the Rule

This rule establishes a special local regulation on December 10, 2016, which will be enforced between the hours of 4 p.m. and 10 p.m. The special local regulation takes place on the Gulf Intracoastal Waterway between mile marker 285.0 and mile marker 289.0, extending the entire width of the navigable channel. A similar special local regulation is currently in the Code of Federal Regulations under 33 CFR 100.801, Table 7, number 15 as occurring ''1 Day; Saturday following Thanksgiving.'' However, for the 2016 occurrence, the event sponsors changed the date of the event to December 10, 2016. The duration of the regulation is intended to protect participants, spectators, and other persons and vessels before, during, and after the regatta. No vessel or person will be permitted to enter, transit within or through, or exit the regulated area without obtaining permission from the COTP or a designated representative. Spectator vessels desiring to enter, transit through or within, or exit the regulated area may request permission to do so from the Patrol Commander. When permitted to transit the area vessels must follow restrictions within the regulated area as directed by the Coast Guard, and must operate at a minimum safe navigation speed in a manner which will not endanger participants in the regulated area or any other vessels.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been

designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-year of the regulation. The special local regulation will take place on a four-mile stretch of navigable waterway, during a short duration of four hours on the Gulf Intracoastal Waterway from mile marker 285.0 to 289.0 on December 10, 2016, which is a time of year experiencing lower than normal traffic. Moreover, the Coast Guard will issue Broadcast Notices to Mariners via VHF–FM marine channel 16 about the regulation so that waterway users may plan accordingly for transits during this restriction. The rule also allows vessels to seek permission from the COTP Mobile or a designated representative to enter the regulated area.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the regulated area may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulation lasting for four hours on the Gulf Intracoastal Waterway between mile marker 285.0 and mile marker 289.0. It is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

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

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, and Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add § 100.35T08–0932 to read as follows:

§ 100.35T08–0932 Special Local Regulation; Saint Andrew Bay; Panama City, FL.

(a) *Regulated area.* All waters of the Gulf Intracoastal Waterway between mile marker 285.0 and mile marker 289.0, Panama City, FL.

(b) *Period of enforcement.* This rule will be enforced from 4 p.m. until 10 p.m. on December 10, 2016.

(c) *Special local regulations.* (1) Entry into, transit within or through, or exit from this area is prohibited unless authorized by the Captain of the Port Mobile (COTP) or the designated Patrol Commander. The Coast Guard will

patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 VHF–FM (156.8 MHz) by the call sign ''PATCOM''.

(2) All persons and vessels not registered with the sponsor as participants or official patrol vessels are considered spectators. The ''official patrol vessels'' consist of any Coast Guard, state, or local law enforcement and sponsor provided vessels assigned or approved by the Captain of the Port (COTP) Mobile to patrol the regulated area.

(3) Spectator vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer will be operated at a minimum safe navigation speed in a manner which will not endanger participants in the regulated area or any other vessels.

(4) No spectator vessel shall anchor, block, loiter, or impede the through transit of participants or official patrol vessels in the regulated area during the effective dates and times, unless cleared for entry by or through an official patrol vessel.

(5) The patrol commander may forbid and control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(6) Any spectator vessel may anchor outside the regulated area, but may not anchor in, block, or loiter in a navigable channel. Spectator vessels may be moored to a waterfront facility within the regulated area in such a way that they shall not interfere with the progress of the event. Such mooring must be complete at least 30 minutes prior to the establishment of the regulated area and remain moored through the duration of the event.

(7) The Patrol Commander may terminate the event or the operation of any vessel at any time it is deemed necessary for the protection of life or property.

(8) The Patrol Commander will terminate enforcement of the special local regulations at the conclusion of the event.

(d) *Informational broadcasts.* The COTP Mobile or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the regulated area as well as any changes in the date and times of enforcement.

Dated: October 14, 2016.

J.H. Snowden,

Captain, U.S. Coast Guard, Captain of the Port Mobile.

[FR Doc. 2016–26961 Filed 11–7–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2016–0380; FRL–9953–87]

Fluxapyroxad; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of fluxapyroxad in or on banana, coffee green bean, mango, and papaya. BASF Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), to ensure that residues on these commodities when imported into the United States would be in compliance with the FFDCA.

DATES: This regulation is effective November 8, 2016. Objections and requests for hearings must be received on or before January 9, 2017, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2016–0380, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2016–0380 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before January 9, 2017. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

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

2016–0380, by one of the following methods:

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

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

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of August 29, 2016 (81 FR 59165) (FRL–9950–22), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition PP 5E8366 by BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, North Carolina 27709–3528. The petition requested that 40 CFR 180.666 be amended by establishing tolerances for residues of the fungicide fluxapyroxad, in or on banana at 3.0 parts per million (ppm); coffee, green bean at 0.2 ppm; mango at 0.7 ppm; and papaya at 0.6 ppm. That document referenced a summary of the petition prepared by BASF Corporation, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

III. Aggregate Risk Assessment and Determination of Safety

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

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

A. Toxicological Profile

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

The Agency recently published a tolerance rulemaking for fluxapyroxad. See **Federal Register** of May 5, 2016 (81 FR 27019) (FRL–9945–48). The toxicological profile and endpoints used for human risk assessment have not changed since that time. Therefore, the Agency is relying on that discussion of the toxicological profile and the toxicological endpoints for this rulemaking as well. Please refer to Unit III. B of the final rule published in the **Federal Register** of May 5, 2016 (81 FR 27019) (FRL–9945–48). In addition, specific information on the studies received and the nature of the adverse effects caused by fluxapyroxad as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document, ''Human Health Risk Assessment for Use of Fluxaproxad on Imported Banana, Coffee, Mango, and Papaya.'' at pp. 12 in docket ID number EPA–HQ–OPP–2016–0380.

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to fluxapyroxad, EPA considered exposure under the petitioned-for tolerances as well as all existing fluxapyroxad tolerances in 40 CFR 180.666. EPA assessed dietary exposures from fluxapyroxad in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

Such effects were identified for fluxapyroxad. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 2003–2008 food consumption data NHANES/WWEIA. Tolerance level residues adjusted to account for the metabolites of concern (M700F008) and 100% crop treated assumptions were used for all plant commodities.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 2003–2008 CSFII. As to residue levels in food, EPA conducted a moderately refined chronic dietary exposure analysis for the general U.S. population and various population subgroups. Average field trial residues for parent plus maximum metabolite residue were used for all plant commodities. An assumption of 100% crop treated was also used for the chronic dietary analysis. DEEM default and empirical processing factors were used.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that fluxapyroxad does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for fluxapyroxad in drinking water.

These simulation models take into account data on the physical, chemical, and fate/transport characteristics of fluxapyroxad. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the Pesticide Root Zone Model Ground Water (PRZM/GW), the estimated drinking water concentrations (EDWCs) of fluxapyroxad for acute exposures are 127 ppb parts per billion (ppb) for surface water and 203 ppb for ground water. The EDWCs for chronic exposures for non-cancer assessments are 127 ppb for surface water and 188 ppb for ground water. Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 203 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration value of 188 ppb was used to assess the contribution to drinking water.

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

There is no residential exposure associated with the proposed uses of fluxapyroxad in this action; however, there are existing turf uses that were previously assessed for fluxapyroxad. Although the Agency had conducted a residential exposure assessment for previous fluxapyroxad actions, the Agency completed an updated turf assessment to reflect an update in the single maximum application rate from 2.47 lb active ingredient (ai)/gallon to 0.005 lb ai/gallon. The present assessment assumed the following exposure scenarios:

- *Residential handler:* The Agency assessed inhalation exposures to adults from applications only because fluxapyroxad does not pose a dermal risk. Residential handler exposure is expected to be short-term in duration. Intermediate-term exposures are not likely because of the intermittent nature of applications by homeowners.
- *Post-application exposures:* Dermal exposures were not assessed because there is no identified systemic dermal hazard for fluxapyroxad. Post-application inhalation exposure while engaged in activities on or around previously treated turf is generally not quantitatively assessed. The combination of low vapor pressure for chemicals typically used as active ingredients in outdoor residential pesticide products and dilution in outdoor air is likely to result in minimal inhalation exposure. Incidental oral exposure for children is anticipated. The quantitative oral exposure/risk assessment for residential post-application exposures is based on the incidental oral scenario for children 1 to <2 years old.

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf.*

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

EPA has not found fluxapyroxad to share a common mechanism of toxicity with any other substances, and fluxapyroxad does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that fluxapyroxad does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

C. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* No evidence of quantitative susceptibility was observed in a reproductive and developmental toxicity study in rats or in developmental toxicity studies in rats and rabbits. Developmental toxicity data in rats showed decreased body weight and body weight gain in the offspring at the same dose levels that caused thyroid follicular hypertrophy/hyperplasia in parental animals. Effects in rabbits were limited to paw hyperflexion, a malformation that is not considered to result from a single exposure and that usually reverses as the animal matures. Developmental effects observed in both rats and rabbits occurred at the same doses as those that caused adverse effects in maternal animals, indicating no quantitative susceptibility. The Agency has low concern for developmental toxicity because the observed effects were of low severity, were likely secondary to maternal toxicity, and demonstrated clear NOAELs. Further, the NOAELs for these effects were at dose levels higher than the points of departure selected for risk assessment for repeat-exposure scenarios. Therefore, based on the available data and the selection of risk assessment endpoints that are protective of developmental effects, there are no residual uncertainties with regard to pre- and/or postnatal toxicity.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for fluxapyroxad is complete.

ii. There is no indication that fluxapyroxad is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity. Although an acute neurotoxicity study showed decreased rearing and motor activity, this occurred on the day of dosing only in the absence of histopathological effects or alterations in brain weights. This indicated that any neurotoxic effects of fluxapyroxad are likely to be transient and reversible due to alterations in neuropharmacology and not from neuronal damage. The Agency has low concern for neurotoxic effects of fluxapyroxad at any life stage.

iii. Based on the developmental and reproductive toxicity studies discussed in Unit III.C.2., there are no residual uncertainties with regard to prenatal and/or postnatal toxicity.

iv. There are no residual uncertainties identified in the exposure databases. The residue database is adequate. The dietary risk assessment is conservative and will not underestimate dietary exposure to fluxapyroxad. There are existing turf uses that were previously assessed and approved for fluxapyroxad. The assessment will not underestimate residential exposure via

handler for adults and incidental oral for children. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to fluxapyroxad in drinking water. EPA used similarly conservative assumptions to assess post application exposure of children as well as incidental oral exposure of toddlers. There are residential uses proposed for fluxapyroxad and the assessment will not underestimate residential exposure via handler for adults and incidental oral for children.

D. Aggregate Risks and Determination of Safety

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

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to fluxapyroxad will occupy 13% of the PAD for children 1 to 2 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to fluxapyroxad from food and water will utilize 70% of the cPAD for infants (<1 year old).

There are no residential use patterns associated with the proposed uses in this action; however, there are residential exposure from existing turf uses that were previously assessed for fluxapyroxad. As a result, aggregate risk is represented by chronic dietary (food and water) and residential exposure. As reflected is these assessments, there are no risk concerns.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Fluxapyroxad is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to fluxapyroxad. Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 1,139 for adults and 431 for children. Because EPA's level of concern for fluxapyroxad is a MOE of 100 or below, these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). An intermediate-term adverse effect was identified; however, fluxapyroxad is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for fluxapyroxad.

5. *Aggregate cancer risk for U.S. population.* As discussed in Unit III.A., EPA has classified fluxapyroxad as ''Not likely to be Carcinogenic to Humans'' based on convincing evidence that carcinogenic effects are not likely below a defined dose range. The Agency has determined that the quantification of risk using the cPAD for fluxapyroxad will adequately account for all chronic toxicity, including carcinogenicity that could result from exposure to fluxapyroxad. Because the Agency has determined fluxapyroxad will not cause a chronic risk, the Agency concludes that fluxapyroxad will not pose a cancer risk for the U.S. population.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

There is a suitable residue analytical method available for enforcement of fluxapyroxad tolerances for plants (BASF Methods L0137/01) which has been radio validated and has undergone successful validation by an independent laboratory. There are liquid chromatography with tandem mass spectrometry (LC/MS/MS) method and monitors two ion transitions. The Limit of Quantitation (LOQ) for BASF method L0137/01 is 0.01 ppm for various matrices.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for fluxapyroxad.

V. Conclusion

Therefore, tolerances are established without a U.S. registration for residues of fluxapyroxad in or on banana at 3.0 parts per million (ppm); coffee green bean at 0.2 ppm; mango at 0.7 ppm; and papaya at 0.6 ppm.

VI. Statutory and Executive Order Reviews

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

''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

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

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

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: October 24, 2016.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.666, add alphabetically the entries ''Banana'', ''Coffee, green bean'', ''Mango'', and ''Papaya'' to the table in paragraph (a), and add footnote 1 to the table to read as follows:

§ 180.666 Fluxapyroxad; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Banana [1]	3.0
* * * * *	
Coffee, green bean [1]	0.2
* * * * *	
Mango [1]	0.7
* * * * *	
Papaya [1]	0.6
* * * * *	

[1] There are no U.S. registrations for this commodity as of November 8, 2016.

* * * * *

[FR Doc. 2016–26966 Filed 11–7–16; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 81, No. 216
Tuesday, November 8, 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 COMMERCE

National Oceanic Atmospheric Administration

15 CFR Part 923

[Docket No. 080416573–6895–02]

RIN 0648–AW74

Changes to the Coastal Zone Management Act Program Change Procedures

AGENCY: Office for Coastal Management, National Ocean Service, National Oceanic Atmospheric Administration (NOAA), Department of Commerce (Commerce).

ACTION: Proposed rule; request for comments.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) wants to provide states and NOAA with a more efficient process for making changes to state coastal management programs (''management programs''). NOAA proposes to revise the Coastal Zone Management Act (CZMA) program change regulations and associated guidance (Program Change Guidance (July 1996) and Addendum (November 2013)) within our regulations. Under the CZMA, a coastal state may not implement any amendment, modification, or other change as part of its approved management program unless the amendment, modification, or other change is approved by the Secretary of Commerce under this subsection. Once NOAA approves the incorporation of a change into a management program, any new or amended management program enforceable policies are applied to federal actions through the CZMA federal consistency provision. This proposed rule addresses the issues raised in NOAA's Advanced Notice of Proposed Rulemaking, 73 FR 29093 (May 20, 2008) (ANPR) to: Provide a more efficient process for states and NOAA to make changes to state management programs; remove unnecessary requirements in the current regulations; establish program change documentation that all states would adhere to; continue to ensure that federal agencies and the public have an opportunity to comment to NOAA on a state's proposed change to its management program; and comply with the requirements of the CZMA and other applicable federal law. The proposed rule also addresses comments submitted on the ANPR.

DATES: Comments on this notice must be received by January 9, 2017.

ADDRESSES: You may submit comments on this proposed rule, identified by NOAA–NOS–2016–0137, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''Submit a Comment'' icon, then enter NOAA–NOS–2016–0137 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a comment'' icon on the right of that line.
- *Mail:* Submit written comments to Mr. Kerry Kehoe, Federal Consistency Specialist, Office for Coastal Management, NOAA, 1305 East-West Highway, 10th Floor, N/OCM6, Silver Spring, MD 20910. Attention: CZMA Program Change Comments.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NOS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NOS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Mr. Kerry Kehoe, Federal Consistency Specialist, Office for Coastal Management, NOAA, at 240–533–0782 or *kerry.kehoe@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Unless otherwise specified, the term ''NOAA'' refers to the Office for Coastal Management, within NOAA's National Ocean Service. The Office for Coastal Management formed in 2014 through the merger of the Office of Ocean and Coastal Resource Management and the Coastal Services Center.

The CZMA (16 U.S.C. 1451–1466) was enacted on October 27, 1972, to encourage coastal states, Great Lake states, and United States territories and commonwealths (collectively referred to as ''coastal states'' or ''states'') to be proactive in managing the uses and resources of the coastal zone for their benefit and the benefit of the Nation. The CZMA recognizes a national interest in the uses and resources of the coastal zone and in the importance of balancing the competing uses of coastal resources. The CZMA established the National Coastal Zone Management Program, a voluntary program for states. If a state decides to participate in the program it must develop and implement a comprehensive management program pursuant to federal requirements. *See* CZMA § 306(d) (16 U.S.C. 1455(d)); 15 CFR part 923. Of the thirty-five coastal states that are eligible to participate in the National Coastal Zone Management Program, thirty-four have federally-approved management programs. Alaska is currently not participating in the program.

An important component of the National Coastal Zone Management Program is that state management programs are developed with the full participation of state and local agencies, industry, the public, other interested groups and federal agencies. *See e.g.,* 16 U.S.C. 1451(i) and (m), 1452(2)(H) and (I), 1452(4) and (5), 1455(d)(1) and (3)(B), and 1456. The comprehensive state management programs must address the following areas pursuant to 15 CFR part 923:

1. Uses Subject to Management (Subpart B);
2. Special Management Areas (Subpart C);
3. Boundaries (Subpart D);

4. Authorities and Organization (Subpart E); and

5. Coordination, Public Involvement and National Interest (Subpart F).

NOAA approval is required for the establishment of a state management program. Once approved, changes to one or more of the program management areas listed above, including new or revised enforceable policies, must be submitted to NOAA for approval through the program change process.

Program changes are important for several reasons: The CZMA requires states to submit changes to their programs to NOAA for review and approval (16 U.S.C. 1455(e)); state programs are not static—laws and issues change, requiring continual operation of the CZMA state-federal partnership; and the CZMA ''federal consistency'' provisions require that federal actions that have reasonably foreseeable coastal effects be consistent with the enforceable policies of federally-approved management programs. The state-federal partnership is a cornerstone of the CZMA. The primacy of state decisions under the CZMA and compliance with the CZMA federal consistency provision is balanced with adequate consideration of the national interest in CZMA objectives; the opportunity for federal agency input into the content of state management programs; NOAA evaluation of management programs and NOAA review and approval of changes to management programs.

In establishing and maintaining their federally-approved management programs, states must consider national interest objectives of the CZMA in addition to state and local interests. The national interest objectives of the CZMA include:

- Effective management, beneficial use, protection and development of the coastal zone (16 U.S.C. 1451(a));
- important ecological, cultural, historic and esthetic values of the coastal zone are essential to the well-being of all citizens (16 U.S.C. 1451(d));
- anticipating and planning for the effects of climate change (16 U.S.C. 1451(l));
- managing coastal development to minimize the loss of life and property caused by improper development and coastal storms (16 U.S.C. 1452(2)(B)); and
- giving priority consideration to coastal-dependent uses and orderly processes for siting major facilities related to national defense, energy, fisheries, recreation, and ports and transportation (16 U.S.C. 1452(2)(D)).

Some of the important issues NOAA must consider when evaluating program changes include whether the change would: (1) Affect CZMA national interest objectives; (2) attempt to regulate federal agencies, lands or waters, or areas outside state jurisdiction; (3) be preempted by federal law; (4) discriminate against particular coastal users or federal agencies; (5) include policies that are enforceable under state law; and (6) raise issues under the National Environmental Policy Act (NEPA), Endangered Species Act (ESA), Marine Mammal Protection Act (MMPA), National Historic Preservation Act (NHPA), Magnuson Stevens Fisheries Conservation and Management Act (MSFCMA) or other federal laws.

NOAA review and approval of program changes is also important because the CZMA provides for federal agency and public participation in the content of a state's management program. NOAA can only approve management programs and changes to management programs after federal agencies and the public have an opportunity to comment on the content of the program change. Within the context of the CZMA federal consistency provisions, an enforceable policy is a state policy that has been incorporated into a state's federally-approved management program, is legally binding under state law (*e.g.,* through constitutional provisions, laws, regulations, land use plans, ordinances, or judicial or administrative decisions), and by which a state exerts control over private and public coastal uses and resources. *See* 16 U.S.C. 1453(6a) and 15 CFR 930.11(h) (enforceable policy). This means that enforceable policies must be given legal effect by state law and cannot apply to federal lands, federal waters, federal agencies or other areas or entities outside a state's jurisdiction, unless authorized by federal law. Also, the CZMA § 307 federal consistency provision requires that state enforceable policies are the standards that apply to federal agency activities, federal license or permit activities, outer continental shelf plans and federal financial assistance activities. 16 U.S.C. 1456; *see also* 15 CFR 930.11(h). Therefore, federal agencies and the public must have an opportunity to review proposed substantive changes to a state's enforceable policies.

Program changes are also important because the CZMA federal consistency provision applies only if the federal action has reasonably foreseeable coastal effects and a state has applicable policies approved by NOAA that are legally enforceable under state law. It is therefore important for states to submit to NOAA for approval timely updates to state management program enforceable policies.

II. Need for Revised Program Change Regulations

The current program change regulations, 15 CFR part 923, subpart H, have been in place since the late 1970s. The CZMA was revised in 1990, in part, to place greater emphasis on state management program enforceable policies. This has led to an increase in the number of program changes submitted to NOAA and the workload for state and federal staff. States and NOAA have, therefore, recognized the need to clarify the program change procedures and to provide a more administratively efficient submission and review process. In 1996, NOAA made minor revisions to the regulations and also issued program change guidance that further described program change requirements. In 2013, NOAA issued an addendum to the 1996 program change guidance for added clarification. Over the years, states and NOAA have, at times, found the regulations difficult to interpret. For example, there has been confusion about determining: When a program change is ''routine'' versus an ''amendment;'' when a program change is ''substantial;'' what level of state analysis is required; what level of detail is needed for a policy to be enforceable; and what can be approved as an enforceable policy.

III. Objectives of the Proposed Rule

NOAA's objectives in revising the program change regulations are to:

1. Establish a clear, efficient and transparent process for program change review;

2. Describe approval criteria and how these apply;

3. Use terminology from the CZMA, including time lines and extensions;

4. Eliminate the distinction between ''routine program changes (RPCs)'' and ''amendments.'' This would remove the program change analysis currently done by states to determine if a change is substantial, and therefore an amendment, and instead require states to describe the nature of the program change and indicate whether the state believes the program change would impact CZMA program approvability areas, national interest objectives, or compliance with other federal laws. The distinction between RPCs and amendments, and the substantiality analyses by states are administrative and paperwork burdens with little or no benefit;

5. Continue to determine on a case-by-case basis the appropriate level of NEPA

analysis warranted. With over 35 years of reviewing program changes, NOAA has determined that the vast majority of program changes do not, for purposes of NEPA, significantly affect the human environment;

6. Encourage states to use underline/strikeout documents for program change submissions to show changes to previously approved policies;

7. Create a program change form that all states would use to submit changes to NOAA, easing state and NOAA paperwork burdens, promoting more consistent submissions and NOAA analyses, and expediting NOAA's review;

8. Use a NOAA ''Program Change Web site'' through which NOAA would electronically post program changes and public comments received, and notify federal agencies and the public of the status of program changes; and

9. Require states to post program change public notices on the state's management program Web site.

In addition, the current regulations at 15 CFR part 923, subpart H, include ''termination of approved management programs.'' However, sanctions to and termination of management programs are described in detail in Subpart L—Review of Performance. Therefore, the proposed changes to subpart H would no longer include termination of approved management programs.

Comments on Advanced Notice of Proposed Rulemaking

Comments were submitted on the ANPR by the Coastal States Organization (CSO), the U.S. Navy, the San Francisco Bay Conservation and Development Commission (BCDC) and the states of Delaware and Oregon. Most of the comments received on the ANPR supported NOAA's objectives and some comments offered suggestions for how some of these objectives might be achieved. NOAA presented eight points in the ANPR to help focus comments. These eight points and the comments submitted to NOAA are discussed below.

1. Establishing a clearer and more efficient and transparent process for program change review.

Comments: All commenters support this objective.

For minor changes to enforceable policies, local plans, etc., a simplified approach could be an annual report to NOAA using a NOAA form/checklist that would describe the change, scope of the change and impacts to enforceable policies (Oregon).

For changes to local enforceable policies such as comprehensive plan provisions, land use regulations and maps, Oregon suggests two alternatives:

Alternative A—NOAA would allow a state to determine that a change in local enforceable policies is consistent with the underlying enforceable policies of state statute or rule that were previously approved by NOAA. A state would submit an annual summary of local amendments that are consistent with underlying state enforceable policies, along with the dates of approval by the state management program of the changes; or,

Alternative B—NOAA and each state would enter into a Memorandum of Understanding that specifies the conditions under which a state would submit changes to local statutes and administrative rules and regulations, and local enforceable policies.

The Navy made various recommendations:

1. Develop specific and reasonable timelines that allow sufficient time for review, and set timelines for related issues such as extensions, preliminary approvals, and requesting mediation;

2. The public should be provided immediate notice of proposed and final program changes;

3. Impose a new requirement for states to assist with notification of the public and federal agencies that may wish to review proposed changes; and

4. Use modern information technology by providing that posting the proposed changes on the Internet, when combined with an email notification roster (listserv), serves as official notification. Create Web sites that include the state's proposed text, NOAA decisions and NEPA documents and links to state management programs.

NOAA Response: NOAA believes that the proposed program change regulations meet the proposal by Oregon for minor changes to state management programs. A state could submit program changes as they occur or on a cyclical basis (twice a year, once a year, etc.) and NOAA has included this in the proposed rule at § 923.81(a). NOAA believes that Oregon's proposal for local plans and policies: (1) Is not compatible with the CZMA requirement that states submit program changes to NOAA for review and approval (16 U.S.C. 1455(e)); (2) would not provide adequate opportunity for NOAA to determine if the local policies are consistent with the decision criteria described in § 923.84; and (3) would not provide adequate opportunity for federal agency or public comment. NOAA believes that the program change submission process in proposed § 923.82 provides an alternative for Oregon's proposal and still satisfies CZMA and NOAA approval requirements.

In response to the Navy, NOAA believes that all of the Navy's recommendations have been met in the proposed rule regarding use of both state and NOAA Web sites and listservs to provide notice of and access to program changes and NOAA's decisions as well as relevant timeframes and decision dates that are dictated primarily by statute.

2. Describing clearer approval/disapproval criteria and how these apply.

Comments: All commenters support this objective. NOAA's decision criteria need to be clearly defined (BCDC).

The only applicable criteria should be that (1) the program continues to meet the standards set forth in section 306 of the CZMA, and (2) that the revised program does not place an unacceptable burden on a federal agency operating in the coastal zone (CSO, Oregon).

Allow state policies to refer to state and allowable federal codes and regulations without including the full text of those authorities (Delaware).

NOAA Response: NOAA has described its program change decision criteria in proposed § 923.84 and believes that the proposed criteria, as well as the program change documentation and form, will clearly define the NOAA decision process. NOAA disagrees that its only approval criteria should be a finding that the program continues to meet the program approval criteria and does not place an unacceptable burden on federal agencies. NOAA believes that in order to meet its obligations under the CZMA, the proposed decision criteria, which NOAA has been using as a matter of policy and practice for many years, are needed to comply with the CZMA and Congressional intent for NOAA oversight. In addition, determining what would be an ''unacceptable burden'' on federal agencies would be subjective at best; rather, NOAA's decision criteria provide a more objective and legally sound basis on which to evaluate state program changes.

NOAA also disagrees that states should be able to impose standards ''by reference'' when those referenced standards have not been subjected to the program change process, NOAA review and opportunity for federal agency and public comment.

3. Using the simpler statutory language, including time lines, extensions, and preliminary approval.

Comments: All commenters support this objective.

NOAA Response: No response needed.

4. Keeping the ''routine'' concept to streamline the process for truly routine changes, but do away with ''routine program changes (RPCs)'' and ''amendments'' and replace with just ''program changes.''

Comments: The commenters support keeping the routine concept and eliminating amendments. The level of analysis should be tailored to fit the complexity of the change to the state's program; assigning labels or categories to changes does not add to the process (BCDC, CSO, Delaware, Oregon).

The Navy welcomes NOAA's initiative towards improving the transparency and ease of the coastal zone management program change review and approval process. The Navy supports NOAA's suggestion that truly routine program changes be identified and their handling streamlined. However, the Navy supports a separate process for amendments (substantial changes) so that affected federal agencies can comment on the proposals. The Navy stated that NOAA should review the types of changes that have been approved over recent years and develop a list of examples deemed to be routine, and NOAA should use the list to prepare descriptive criteria for routine changes.

NOAA Response: Consistent with the comments from BCDC, CSO, Delaware and Oregon, the program change regulations will eliminate the distinction between ''routine program changes'' and ''amendments.'' States will be required to use a program change form to identify the changes being submitted for approval. The level of effort needed by NOAA to review changes will correspond to the type of changes proposed. All program changes will be submitted using the same process, which will eliminate the need for states to make the former distinction between amendments and routine program changes. Using the same process, in addition to a program change form, should make program change submissions and review more efficient for state and NOAA staff. Program changes identified in proposed § 923.82(b) will be reviewed by NOAA in a more expedited manner.

NOAA believes it has met the Navy's objectives without needing to use the current distinction between routine program changes and amendments. As explained elsewhere in the proposed rule, this distinction is unnecessary and the history of program changes shows that most changes are routine. Moreover, under the proposed program change regulations, NOAA will provide access to program change materials, send notices to federal agencies, and provide an opportunity for federal agencies to comment on all program changes. At the same time, administrative burdens on states and NOAA will be lessened.

NOAA's proposed removal of the distinction between routine changes and amendments is based on NOAA's review of almost one thousand changes to management programs over the past thirty-five years. The vast majority of these changes were modifications to existing parts of NOAA approved management programs. In only a few instances did NOAA prepare an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) and even rarer an Environmental Impact Statement (EIS). The determining factors in the few instances when NOAA prepared an EA or EIS, were the magnitude of the change proposed by a state, usually involving a major new component to the management program or a major change in focus to the existing management program. Most of these also involved controversial positions by the state.

From 1977 to March 2016, there have been approximately 862 changes to management programs approved by NOAA. Less than 2.5 percent, about twenty, were amendments; approximately 842 were RPCs. Seventy-five percent of the amendments (about fifteen) were before 1990 and many of these were for the addition of energy facility siting plans required by an amendment to the CZMA. For five of the amendments NOAA prepared an EIS (1998, 1991, 1997, 2004 and 2004) and two of these included informal ESA consultation. For fourteen of the amendments NOAA prepared an EA and FONSI. Of the approximately 842 RPCs, NOAA prepared an EA and FONSI for two of them.

State CZMA management programs are comprehensive programs that, when they are being developed, undergo extensive review by states, NOAA, federal agencies and the public, including environmental review and an EIS under NEPA. In most instances changes to management programs have added further details to the previously approved management program and have not presented issues not considered during initial program approval and subsequent program changes. Under NOAA's current program change regulations and guidance these would be routine program changes (RPCs) and not substantial changes, or amendments. NOAA intends to eliminate the distinction between RPCs and amendments and just have ''program changes.''

5. Removing the ''substantial'' evaluations currently done by states and replacing such evaluations with a description of what the change is to the program. Further evaluations (by states or NOAA) would be for specific CZMA, NEPA, ESA, NHPA, etc., purposes, *e.g.,* is an EA or EIS, or ESA consultation needed.

Comments: BCDC, CSO, Delaware, Oregon support removing the ''substantial'' evaluations.

Much of the difficulty in the current procedure for compiling and submitting program changes stems from the requirement for a detailed comparison of old and new versions of state laws, state rules and regulations, and local comprehensive plans and ordinances. While this side-by-side comparison may have some utility, it turns out to have little or no practical value to either NOAA or the state, and has become a barrier to making federal consistency determinations that reflect current conditions (Oregon).

For substantial changes, NOAA should also provide a **Federal Register** Notice to ensure that the public understands what changes are proposed. This provides agency personnel who may not be included on an email list or listserv with the opportunity to comment and express their concerns (Navy).

NOAA Response: NOAA does not believe that **Federal Register** notices, in general, are needed, especially since NOAA will be making program changes and related notices publicly available on its new ''Program Change Web site.'' Through the Web site, federal agencies and the public will be able to sign up to receive program change notices from NOAA. However, where there is a major change in a state's management program that may require a separate EA or EIS, NOAA may decide to publish notices in the **Federal Register**.

6. Establishing use of NEPA categorical exclusions.

Comments: CSO and the state of Oregon support this goal, but note that it requires further explanation.

The Navy recommended that NOAA consider, pursuant to 15 CFR 930.33(a)(3), developing a list of universal de minimis activities based on NEPA categorical exclusions and on existing federal activity de minimis lists that have been approved by state agencies, retaining the ability of states and federal agencies to mutually agree on additional de minimis activities. States could modify the universal de minimis lists by adding mitigating or compliance conditions. Such additions should be subject to the change review procedures.

NOAA Response: NOAA will determine on a case-by-case basis the appropriate level of NEPA analysis warranted for the action. NOAA has determined that, when applicable, a more appropriate process for NEPA compliance may be use of a categorical exclusion.

In response to the Navy's novel approach to using the de minimis provision of NOAA's federal consistency regulations, NOAA does not believe it could impose such a list of de minimis activities. NOAA does, however, encourage federal agencies to propose de minimis activities and submit these to the coastal states for their concurrence under the federal consistency provision. *See* 15 CFR 930.33.

7. Submitting underline/strikeout documents showing changes to previously approved policies.

Comments: BCDC supported the use of underline/strikeout documents, but stated that NOAA should provide flexibility to account for multiple and large-scale changes to a policy over time, large documents, etc.

CSO found this to be an unnecessary and overly burdensome requirement. CSO stated that there may be instances where such a technique is employed to clearly explain a program change, but this is more appropriately an available tool, rather than a strict requirement.

The Navy suggested that NOAA require submission of underline/strikeout documents showing changes to previously approved documents.

NOAA Response: NOAA encourages states to use underline/strikeout documents but recognizes that such documents are not always practicable.

8. Creating a program change checklist that states would submit to ease state and NOAA paperwork burdens and promote consistent submissions and NOAA analyses.

Comments: All commenters support this objective. One item on this checklist would be formal notification of federal agencies about program changes. In addition, CSO and Oregon suggested that a list of federal agencies and points of contact for notice of program changes updated and maintained by NOAA would greatly improve this step in the process. NOAA Response: Through the federal consistency Web site and the developing program change Web site there are and will be federal agency contacts maintained by NOAA. *See* http://www.coast.noaa.gov/czm/consistency/. In addition, federal agencies and the public will be able to view program changes posted to NOAA's new ''Program Change Web site.''

IV. Explanation of Proposed Changes to the CZMA Program Change Regulations

§ 923.80 General

This section describes the general requirements for program changes. Paragraph (a) states that the term ''program changes'' includes all terms used in the statute, CZMA § 306(e), and identifies the Office for Coastal Management as the NOAA office that administers these regulations. Paragraph (b), derived from CZMA § 306(e), states that a coastal state may not implement a change as part of its management program until NOAA approves the program change. Similarly, a coastal state may not use a state or local government policy or requirement as an ''enforceable policy'' for purposes of federal consistency unless NOAA has approved the state or local policy or requirement as an ''enforceable policy.'' State or local government law not approved by NOAA as part of a state's management program remain legal requirements for state and local government purposes, but will not be part of a state's management program and, therefore, cannot be used for CZMA federal consistency purposes.

Paragraph (d) states that the term ''enforceable policies'' has the same definition as that included in NOAA's CZMA federal consistency regulations at 15 CFR 930.11(h). NOAA has added enforceable policy decision criteria in proposed § 923.84. These criteria have been included in NOAA guidance and information documents and have been part of long-standing NOAA implementation of program changes and enforceable policies. *See, e.g.,* NOAA's Program Change Guidance (July 1996) (http://coast.noaa.gov/czm/consistency/media/guidanceappendices.pdf) and NOAA's Federal Consistency Overview document (http://www.coast.noaa.gov/czm/consistency/media/FC_overview_022009.pdf).

Paragraph (e) notes that the submission of program changes may be required as a necessary action under NOAA's evaluation of management programs under CZMA § 312 and 15 CFR part 923, subpart L. Failure to comply with a necessary action to submit a program change can result in a suspension of CZMA grants pursuant to CZMA § 312 and the subpart L regulations.

§ 923.81 Program Change Procedures, Deadlines, Public Notice and Comment and Application of Federal Consistency

This section sets forth various procedures for submitting program changes.

Paragraph (a). Program changes must be submitted by the Governor of a coastal state, the head of the single state agency designated under the management program to be the lead state agency for administering the CZMA, or the head of an office within the designated single state agency if the state has authorized that person to submit program changes.

NOAA would no longer require states to mail hard copies of program changes. Rather, all program changes would be submitted through the new Program Change Web site or through an alternative method, agreed to by the state and NOAA, if an electronic submission through the Web site is not possible.

All deadlines and timeframes would start on the first full business day after NOAA receives a program change (Day 1). For example, if a submission is received on a Thursday, Day one for timeline purposes would be Friday; if the day of receipt is Friday and Monday is a federal holiday, Day 1 would be Tuesday. All days, starting with Day 1, are included in the calculation of total time for a deadline, including weekends and federal holidays. States may request that the official start date occur at a later time; this is an administrative convenience NOAA has allowed states to use in the past to account for various state administrative purposes.

Paragraph (b). NOAA shall confirm receipt of all program changes and future deadlines. During NOAA's review of a program change, NOAA may request additional information that it needs to make its decision.

Paragraph (c). This paragraph sets forth the deadlines NOAA must follow in responding to state program change requests. The deadlines in paragraph (c) are the same as NOAA's current practice and clarify a discrepancy that exists in the current program change regulations and the CZMA. NOAA is required by the Act to respond within 30 calendar days of receipt of a program change request. The 30-day period starts on Day 1 (the first full business day after receipt of a program change request). If NOAA does not respond within the 30-day period, then NOAA's approval is presumed. NOAA may extend its review period up to 120 days after receipt of a program change request, if NOAA so notifies the state during the 30-day period. NOAA may continue to extend

its review period up to 120 days and can extend beyond 120 days for NEPA compliance; NOAA would have to notify the state of the NEPA extension during the 120-day review period.

Paragraph (d). This paragraph codifies the current practice of pre-submission consultation with NOAA to identify any potential approval issues prior to submitting a program change submission. States are encouraged to submit draft program changes to NOAA for informal review and to consult with NOAA, to the extent practicable, prior to state adoption of new or revised laws, policies and other provisions that the state intends to submit as a program change.

Paragraph (e). NOAA is simplifying the public notice and comment procedures for program changes. Given the reliance on electronic means of communication and the demise of hard copy notices in newspapers and other formats, all states would be required to post public notices on state management program's Web site and directly email or mail notices to applicable local and regional offices of relevant federal agencies, federal agency headquarter contacts, affected local governments and state agencies, and any individuals or groups requesting direct notice. NOAA's program change review period would not begin until such notice is provided. NOAA will also post the state notices on its Program Change Web site and directly notify via email federal agency headquarter contacts and any other individual or group requesting direct notice. The state's public notice would describe the program change, any new or modified enforceable policies, and indicate that any comments on the program change shall be submitted to NOAA. NOAA will post the program change and all NOAA decisions on its Web site and notify federal agency headquarter contacts and other individuals or groups requesting notification. NOAA may extend the public comment period.

Paragraph (f). This paragraph states that program changes to enforceable policies can only be applied for CZMA federal consistency review purposes on or after the date NOAA approves the changes. The effective date for the approved changes will be the date on NOAA's approval letter. NOAA will post its program change decision letters on its Program Change Web site. This section would also codify in regulation NOAA's long-standing position that a state enforceable policy cannot apply retroactively to previously proposed federal actions; proposed federal actions are only subject to the management program enforceable policies approved at the time the federal action is proposed under the various subparts of 15 CFR part 930. Applying newly approved program changes retroactively to proposed federal actions would be contrary to Congressional intent that federal consistency apply in an expeditious and timely manner, and could impose unfair requirements on applicants and federal agencies.

§ 923.82 Program Change Submissions

The changes described in § 923.82(b) are editorial or are minor in scope, both procedurally and substantively. These changes are not controversial and pose little or no impact on federal agencies or the public. Therefore, NOAA's review of changes under § 923.82(b) would be expedited.

Paragraphs (b)(1) through (4) describe program changes that are either editorial in nature or are minor in scope, both procedurally and substantively. Paragraph (b)(1) addresses editorial or non-substantive changes to state laws, regulations, enforceable policies, local government coastal programs or plans that contain enforceable policies, and other authorities. Paragraph (b)(2) covers changes to special area management plans that do not change a state's coastal zone boundary, enforceable policies or geographic location descriptions, and are not otherwise used by the state for federal consistency review. Paragraph (b)(3) covers most organizational changes where the primary structure and responsibilities of the management remain intact. NOAA will closely monitor organizational changes to ensure that major overhauls of a state's management program structure would not weaken a coastal program.

Paragraph (b)(4). Most program changes, even those that result in some substantive change to a management program, have historically been routine and non-controversial, and have not posed any approval issues or resulted in any comments from federal agencies or the public. NOAA's review of these types of program changes should be expedited so long as these minor substantive changes would only apply to revised enforceable policies, not wholly new enforceable policies, and the changes are consistent with the scope and application of the previously approved enforceable policy.

The types of program changes under § 923.82(c) are self-explanatory and include: any changes that are not covered under § 923.82(b) and would be used for federal consistency purposes (new or revised enforceable policies, changes to state lists of federal actions subject to federal consistency review, geographic location descriptions outside the coastal zone, necessary data and information); new or revised coastal uses; changes in the coastal zone boundary; program approval authorities; and special area management plans.

Paragraph (c)(4), recognizes that for some states with local coastal programs or plans, the state can respond to federal consistency reviews without having to refer to the local programs or plans. In such cases, while the local programs and plans are important implementing mechanisms for coastal management in the state, states do not need to submit updates to the local programs or plans if they do not contain enforceable policies for federal consistency purposes. This would remove the substantial administrative burden for states and NOAA to submit and review local coastal programs.

Paragraph (d) addresses changes to state Clean Air Act (CAA) and Clean Water Act (CWA) Pollution Control Requirements. CZMA § 307(f) states that CAA and CWA requirements established by the Federal Government or by any state or local government pursuant to the CWA and CAA shall be incorporated in state management programs and shall be the water pollution control and air pollution control requirements applicable to such management program. NOAA's long-standing interpretation of 307(f) has been that these CWA and CAA pollution control requirements are automatically enforceable policies of the state management programs and, therefore, states are not required to submit as program changes any changes to state CAA and CWA provisions.

§ 923.83 Program Change Materials

Section 923.83 describes all the program change information a state would submit to NOAA. These requirements are self-explanatory. NOAA intends to transform each of these paragraphs into a form that would, to the greatest extent practicable, use check-boxes or ''radio-buttons,'' and require minimal text input. While the same form would be used for all program changes, there would be less information needed for those changes that fall under § 923.82(b).

Paragraph (a)(2)(vi) codifies NOAA interpretation and long-standing practice of the term ''enforceable mechanism.'' An enforceable mechanism is the state legal authority that makes a state policy enforceable under state law. In order to be an ''enforceable policy,'' CZMA § 304(6a) requires that the policies be legally binding under state law. NOAA has interpreted this to mean that the

enforceable policy must be incorporated into the state's NOAA-approved management program, but the underlying enforceable mechanism does not necessarily have to be incorporated into a state's management program or submitted for NOAA approval. Some enforceable mechanisms are integral parts of the management program or are needed for NOAA approval of a state's management program and changes to these enforceable mechanisms would be submitted to NOAA as program changes (*e.g.,* core management program statutes, regulatory permit programs that implement a part of a management program). States need to identify the enforceable mechanism for each enforceable policy. This is needed not only so NOAA can concur that a state policy is legally binding under state law, but an enforceable mechanism may be changed in such a way that makes an enforceable policy no longer legally binding under state law. In such cases, that policy, while previously approved by NOAA as part of the state's management program, would no longer be an enforceable policy that could be used for federal consistency purposes.

States are encouraged to show the changes, additions and deletions to enforceable policies using an underline/strikeout format or other similar format. If a state uses an underline/strikeout format, the state should only show the changes from the version of the policy last approved by NOAA and the most current version that is being submitted to NOAA; a state does not need to show any changes to the policy that might have been made in between NOAA's last approval and the current version.

States are also encouraged to post comprehensive lists of the enforceable policies to the state's coastal management program Web site.

§ 923.84 Program Change Decision Criteria

The decision criteria in this section are taken from the current Program Change Guidance (1996) and NOAA's Federal Consistency Overview document. NOAA has applied these criteria since at least 1996 when reviewing program change requests. These criteria are generally self-explanatory and states would use a program change form to be developed by NOAA to assess whether these criteria are satisfied. For enforceable policies under paragraph (b) of this section, a policy must contain a standard; if a provision of a state law or regulation merely directs a state agency to develop standards, then that provision would not be an enforceable policy as it does not contain a standard. An enforceable policy should contain terms such as ''shall,'' ''must,'' or other terms interpreted under state law that mandate some action or compliance. Paragraph (b) also clarifies that it does not always make sense to parse out the enforceable policies within a statute or regulation that also contain parts that are necessary details for applying enforceable policies even though not enforceable themselves. This includes definitions, procedures, and information requirements that are essential elements of interpreting the substantive standards and determining consistency with the standards. Therefore, in some cases NOAA may find that a statute or regulation in its entirety is enforceable.

Paragraph (b) also clarifies that enforceable policies must: Apply to areas and entities within state jurisdiction; not assert regulatory authority over federal agencies, lands or waters unless federal law authorizes such jurisdiction; not be preempted on their face by federal law; not attempt to incorporate by reference other state or local mandatory requirements not submitted to, reviewed, and approved by NOAA; not discriminate against a particular activity or entity; and not adversely affect the national interest in the CZMA objectives.

For example, if a state is concerned about having policies that would apply to offshore oil and gas activities, the state would need to develop policies that would apply to any activity or industry that would have similar coastal effects; the state could not single out offshore oil and gas unless there are specific activities or coastal effects that only apply to the offshore oil and gas industry. Likewise, if a state wants to promote marine renewable energy in its enforceable policies, it may do so, but could not at the same time prohibit other forms of energy development without sufficient justification. Blanket prohibitions are generally not approved by NOAA as part of a state's management program unless a state provides sufficient justification. NOAA will not approve proposed enforceable policies which can be applied in an arbitrary or in a discriminatory manner. An enforceable policy cannot prohibit an activity due to the nature of its effects, *e.g.,* potential marine mammal ship strikes, if other activities pose the same kind and degree of risk and are not prohibited. There must be a sufficient justification for discriminatory policies. NOAA would evaluate such proposed program changes to determine if such discrimination is warranted and also whether a prohibition of an activity would violate the national interest objectives of the CZMA.

Paragraph (c) codifies long-standing NOAA practice and guidance when previously NOAA-approved enforceable policies are no longer enforceable for purposes of federal consistency review. If an underlying enforceable mechanism, *e.g.,* a state law, is repealed or changed in such a way so that an enforceable policy is no longer supported by the law, or a court determines a policy is not enforceable, then the policy is no longer legally binding under state law and could no longer be used for federal consistency purposes. The same applies if a policy previously approved by NOAA is subsequently preempted by federal law or impacted by a court decision.

Paragraph (d) describes NOAA criteria for states to amend their lists of federal actions subject to federal consistency review and to propose geographic location descriptions (GLDs) to review federal actions outside the coastal zone, either landward or seaward. This paragraph focuses on the need for a state to make an adequate justification based on reasonably foreseeable effects to the state's coastal uses or resources. For NOAA to find that an activity in a proposed GLD outside the coastal zone may have coastal effects, a state must show that the impact from an activity will have a reasonably foreseeable effect to coastal uses or resources of the state. A state's burden to demonstrate coastal effects means that a mere assertion that an activity in federal waters will have an impact is insufficient to make a finding of reasonably foreseeable coastal effects. Moreover, a state's effects analysis must provide more than general assertions of impacts or that resources or uses are ''important,'' or should be reviewed because of the proximity of an activity to state coastal uses or resources. A persuasive coastal effects analysis should identify:

1. The affected uses (*e.g.,* commercial and recreational fishing, boating, tourism, shipping, energy facilities) and resources (*e.g.,* fish, marine mammals, reptiles, birds, landmarks).

2. Where and in what densities the uses and resources are found.

3. How the state has a specific interest in the resource or use. Be specific in showing their connection to the coastal zone of the state (*e.g.,* economic values, harvest amounts, vulnerabilities, seasonal information relevant to the proposed activity).

4. Where the proposed activity overlaps with these resources, uses and values.

5. Impacts to the resources or uses from the proposed activity.

6. The causal connection to the proposed activity, including how any

impacts from the activity results in reasonably foreseeable effects on the state's coastal uses or resources.

7. Why any proposed mitigation may be inadequate.

8. Empirical data and information that supports the effects analysis and can be shown to be reliable; visualizes the affected area, resources and uses with maps; and shows values, trends and vulnerabilities.

§ 923.85 Procedural Requirements of Other Federal Law

This section describes compliance and consultations under other federal law such as ESA, NHPA, MSFCMA or MMPA. This has to do with the nature of NOAA's action in approving a program change, in that NOAA can approve or deny a program change, but cannot affect the state's ability to enact a law and implement it at the state level. NOAA's approval of any state or local provisions as enforceable policies of the state's management program means those provisions can be used during a state's CZMA federal consistency review.

In addition, it is important to understand the nature of NOAA's discretion for the review and approval of program changes when informally or formally consulting on Endangered Species Act, other federal consultations and addressing tribal concerns.

The CZMA is not a delegated program; there are not federal CZMA standards, there is not a federal coastal zone, and NOAA does not implement management programs. The CZMA is a voluntary program and if a state chooses to participate it develops a management program unique to each state, based on state laws and policies pursuant to general program requirements in the CZMA and NOAA's regulations.

Once NOAA approves a state's management program, NOAA cannot require a state to change its program. NOAA can, through periodic evaluations of a state's management program under CZMA § 312, establish necessary actions if NOAA finds a state is not adhering to its NOAA-approved program, but NOAA can only *recommend* that a state change its program to create a different state standard or to address emerging issues. If NOAA finds that a state is not adhering to its management program and the state does not remedy the issue, NOAA's only recourse is to impose financial sanctions by withholding a part of a state's annual CZMA implementation grant until the state remedies the issue or ultimately NOAA could decertify a state's management program.

If a state submits a program change, NOAA can approve or disapprove that program change. When NOAA reviews a program change, NOAA has a limited ability to require a state to make changes to state policies. If NOAA disapproves, this does not require a state to change state law. Therefore, there is no effect from NOAA's denial on the implementation of state law at the state (or local government) level. NOAA's denial means the disapproved state policy is not part of the state's NOAA approved management program and cannot be used for CZMA federal consistency purposes. NOAA cannot use a program change to require changes to other parts of a state's management program.

VI. Miscellaneous Rulemaking Requirements

Executive Order 12372: Intergovernmental Review

This program is subject to Executive Order 12372.

Executive Order 13132: Federalism Assessment

NOAA has concluded that this regulatory action is consistent with federalism principles, criteria, and requirements stated in Executive Order 13132. The proposed changes in the program change regulations are intended to facilitate federal agency coordination with coastal states, and ensure compliance with CZMA requirements. The CZMA and these revised implementing regulations promote the principles of federalism articulated in Executive Order 13132 by granting the states a qualified right to amend their federally-approved management programs to address activities that affect the land and water uses or natural resources of state coastal zones and to apply these amended management programs to federal actions through the CZMA federal consistency provision. CZMA § 307 and NOAA's implementing regulations (15 CFR part 930) balance responsibilities between federal agencies and state agencies whenever federal agencies propose activities, or applicants for a required federal license or permit propose to undertake activities, affecting state coastal uses or resources. Through the CZMA, federal agencies are required to carry out their activities in a manner that is consistent to the maximum extent practicable with federally-approved state management programs while licensees and permittees are to be fully consistent with the state programs. The CZMA and these implementing regulations, rather than preempting a state, provide a mechanism for it to object to federal actions that are not consistent with the state's management program. A state objection prevents the issuance of the federal permit or license, unless the Secretary of Commerce overrides the objection. Because the CZMA and these regulations promote the principles of federalism and enhance state authorities, no federalism assessment need be prepared.

Executive Order 12866: Regulatory Planning and Review

This regulatory action is not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act

The Chief Counsel for Regulation for the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The term ''small entity'' includes small businesses, small organizations, and small governmental jurisdictions. The Regulatory Flexibility Act (RFA) defines a small jurisdiction as any government of a district with a population of less than 50,000.

The existing regulations do not have a significant economic impact on a substantial number of small entities and, thus, these clarifying changes will not result in any additional economic impact on affected entities. The proposed rule revises provisions of the program change regulations to provide for a more effective and efficient process for states to amend their management programs, NOAA to review the proposed changes, and for federal agencies and the public to comment. The program change regulations, and the proposed rule, primarily affect states; the proposed changes do not impose any requirements on small entities.

The existing regulations do not, and the proposed rule will not, if adopted, have a significant economic impact on a substantial number of small entities. Accordingly, an Initial Regulatory Flexibility Analysis was not prepared.

Paperwork Reduction Act

This proposed rule contains no additional collection-of-information requirement subject to review and approval by the Office of Management and Budget under the Paperwork Reduction Act; rather it changes the manner in which states provide information to NOAA and, in some

cases, eliminates or reduces information currently required.

National Environmental Policy Act

NOAA has concluded that this proposed regulatory action does not have the potential to pose significant impacts on the quality of the human environment. Further, NOAA has concluded that this proposed rule, if adopted, would not result in any changes to the human environment. Therefore, NOAA has concluded that, pursuant to sections 5.05 and 6.03c.3(i) of NAO 216–6, this proposed rulemaking does not have a significant impact on the human environment and is categorically excluded from the need to prepare an environmental assessment or environmental impact statement pursuant to the requirements of NEPA in accordance with NAO 216–6. *See also* the description above on NEPA compliance for program changes.

Dated: October 24, 2016.

W. Russell Callender,

Assistant Administrator for Ocean Services, National Oceanic and Atmospheric Administration.

List of Subjects in 15 CFR Part 923

Administrative practice and procedure, Coastal zone, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, NOAA proposes to revise 15 CFR part 923 as follows:

PART 923—COASTAL ZONE MANAGEMENT PROGRAM REGULATIONS

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

Authority: 16 U.S.C. 1451 *et seq.;* 31 U.S.C. 6506; 42 U.S.C. 3334; Sections 923.92 and 923.94 are also issued under E.O. 12372, July 14, 1982, 3 CFR 1982 Comp. p. 197, as amended by E.O. 12416, April 8, 1983, 3 CFR 1983 Comp. p. 186.

■ 2. Revise subpart H to read as follows:

Subpart H—Changes to Approved Management Programs

Sec.
923.80 General.
923.81 Program change procedures, deadlines, public notice and comment and application of federal consistency.
923.82 Program change submissions.
923.83 Program change materials.
923.84 Program change decision criteria.
923.85 Procedural requirements of other Federal law.

§ 923.80 General.

(a) This subpart establishes the criteria and procedures by which any proposed change to approved management programs shall be made. The term ''program change'' includes all terms used in section 306(e) of the Act, including amendment, modification or other program change. Draft program changes submitted to NOAA for informal review and comment are not subject to these requirements. Unless otherwise specified, the term ''NOAA'' refers to the Office for Coastal Management, within NOAA's National Ocean Service. (The Office for Coastal Management was formerly known as the Office of Ocean and Coastal Resource Management and the Coastal Services Center.)

(b) Pursuant to section 306(e) of the Act, a coastal state may not implement any change to a management program as part of its management program unless the state submits, and NOAA approves, the change for incorporation into the state's federally-approved management program. A state shall not use a state or local government policy or requirement as an ''enforceable policy'' under 16 U.S.C. 1453(6a) and § 930.11(h) of this subchapter for purposes of federal consistency under 16 U.S.C. 1456 and part 930 of this subchapter, unless NOAA has approved the incorporation of, and subsequent changes to, the state or local policy into the state's management program under this subpart. State or local government law not approved by NOAA as part of a state's management program remain legal requirements for state and local government purposes, but not for CZMA federal consistency purposes.

(c) For purposes of this subpart, program changes include changes to enforceable policies as well as changes to one or more of the following management program areas under part 923: Uses Subject to Management (Subpart B); Special Management Areas (Subpart C); Boundaries (Subpart D); Authorities and Organization (Subpart E); and Coordination, Public Involvement and National Interest (Subpart F).

(d) The phrase ''enforceable policies'' used in this subpart is described in 16 U.S.C. 1453(6a) and § 930.11(h) of this subchapter. Enforceable policies are the only policies states can use to determine whether a federal action is consistent with its management program under section 307, the Federal Consistency provision, of the Act (16 U.S.C. 1456 and part 930 of this subchapter).

(e) Suspension of grants. Pursuant to section 306(e)(1) of the Act and § 923.135 of this subchapter, NOAA may suspend all or part of any grant or cooperative agreement made under section 306 of the Act if the state has failed to submit a program change identified as a necessary action under section 312 of the Act and part 923, subpart L (Review of Performance) and pursuant to the requirements for NOAA to notify the Governor of a state under the enforcement provisions of § 923.135 of this subchapter.

§ 923.81 Program change procedures, deadlines, public notice and comment and application of federal consistency.

(a) Pursuant to section 306(d)(6) of the Act and § 930.11(o) of this subchapter, all program changes shall be submitted to NOAA by: The Governor of a coastal state with an approved management program; the head of the single state agency designated under the management program to be the lead state agency for administering the CZMA; or the head of an office within the designated single state agency if the state has authorized that person to submit program changes. Program changes may be submitted to NOAA on a cyclical basis (*e.g.,* quarterly, twice a year, annually) or as the changes occur.

(1) One (1) copy shall be submitted electronically using the Program Change Form on NOAA's Program Change Web site and addressed to: Chief, Stewardship Division, Office for Coastal Management, NOAA, 1305 East-West Hwy., 10th Floor, Silver Spring, MD 20910.

(i) If a state is not able to electronically send all or part of a program change to NOAA through NOAA's Program Change Web site, the state and NOAA shall agree to an alternative method (*e.g.,* email, electronic CD, or a state Web site). In such instances, NOAA will, to the extent practicable, post the program change to NOAA's Program Change Web site.

(2) All deadlines and timeframes under this subpart shall start on the first full business day after the day NOAA receives a program change (Day 1). For example, if a submission is received on a Thursday, day one of NOAA's review period would be Friday; if the day of receipt is Friday and Monday is a federal holiday, Day 1 would be Tuesday. All days, starting with Day 1, are included in the calculation of total time for a deadline, including weekends and federal holidays. A state may request that NOAA's review period begin on a specified date following receipt by NOAA.

(b) When NOAA receives a program change, NOAA shall notify the state (via email or letter) of the date the program change was received and NOAA's expected decision deadline. NOAA will also notify the state if NOAA determines the submission is incomplete. If NOAA

determines a submission is incomplete, NOAA shall inform the state that the program change review timeline shall not start until the missing information is submitted. During NOAA's review of a program change request, NOAA may request additional information that NOAA needs to make its decision.

(c) NOAA shall respond to the state (via email or letter) within 30 calendar days after the date NOAA receives a program change. The 30 days starts on Day 1. If NOAA does not respond within the 30-day period, then NOAA's approval is presumed. NOAA may extend its review period up to 120 days after receipt of a program change request, if NOAA so notifies the state during the 30-day period. NOAA can extend beyond 120 days only as necessary to meet the requirements of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*). NOAA shall inform the state via email or letter whether NOAA approves, approves in part, approves with qualifications or denies the incorporation of the program change into the state's management program.

(d) Pre-submission consultation. States shall, to the extent practicable, consult with NOAA prior to state adoption of new or revised state laws, policies, regulations, and other changes the state intends to submit to NOAA as a program change. States are encouraged to submit draft program changes to NOAA for informal review and comment prior to submitting a program change. If consulted, NOAA shall review draft submissions to identify issues that would need to be addressed in the formal submission.

(e) Public Notice and Comment.

(1) A state shall post a public notice of its program change on the state's management program Web site in a conspicuous manner, and email or mail the public notice to local and regional offices of relevant federal agencies, federal agency CZMA headquarter contacts identified on NOAA's federal consistency Web site, affected local governments and state agencies, and to individuals requesting direct notice. The state shall post its public notice prior to, or on the same date as, the date the state submits the electronic program change to NOAA. NOAA's program change review period shall not start until NOAA informs the state that it has received the program change. To meet the requirement for direct public notice (via email or mail), states are encouraged to maintain a coastal management listserv or mailing list. In addition to posting the public notice on the state's Web site and notifying the parties described above, states may, but are not required to, publish the notice in any state bulletin or newspaper.

(2) A state's public notice shall:

(i) Describe the nature of the program change;

(ii) If applicable, identify any new, modified or deleted enforceable policies of the management program;

(iii) Indicate that any comments on the content of the program change shall be submitted to NOAA through NOAA's Program Change Web site within 21 calendar days of the date NOAA's review period starts; and

(3) NOAA shall post all program changes on its Program Change Web site where any interested party may review or download materials. NOAA shall also post on its Program Change Web site deadlines, extensions and any comments received. For each program change posted on NOAA's Web site, NOAA shall notify the federal agency CZMA headquarter contacts (identified on NOAA's federal consistency Web site) via email. In addition, any party may request through the Program Change Web site that NOAA notify them via email when program changes are submitted by one or more state(s). NOAA's email shall also state that any party may submit comments to NOAA on a program change request within 21 calendar days from the date NOAA's review period starts.

(4) NOAA may, at its discretion, extend the public comment period or hold a public hearing. NOAA shall only consider holding a public hearing for a program change that would substantially change a management program and/or be controversial.

(5) NOAA shall post its program change decisions on its CZMA Program Change Web site and shall notify, by email, federal agency CZMA headquarter contacts and individuals requesting such notice. A state shall post NOAA's decision regarding a state's program change on the state agency's Web site.

(f) Application of approved program changes for federal consistency purposes under section 307 of the Act (16 U.S.C. 1456) and part 930 of this subchapter. Changes to a state's management program and enforceable policies shall be applicable for federal consistency purposes on the date NOAA approves the changes. The effective date for the approved changes will be the date on NOAA's approval letter. NOAA will post its program change decision letters on its Program Change Web site. Approved program changes shall not apply retroactively to state federal consistency reviews under part 930 of this subchapter, subparts C, D, E or F, for proposed federal actions where a federal agency (subpart C), applicant (subpart D), person (subpart E), or applicant agency (subpart F) had submitted to the management program a consistency determination or consistency certification prior to NOAA's approval, except as allowed by part 930 of this subchapter, unless the proposed federal action was finalized or authorized and there is a substantial change, amendment or renewal proposed for the federal action on or after the date of NOAA's approval of a program change, pursuant to the applicable subpart of part 930.

§ 923.82 Program change submissions.

(a) As required by CZMA § 306(e)(3)(A), coastal states may not implement a change as part of its approved management program unless the change is approved by NOAA. In accordance with § 923.81 and § 923.83, states shall submit program changes to NOAA for approval using the Program Change Form on NOAA's Program Change Web site.

(b) The following types of program changes shall be approved by NOAA as long as they satisfy the decision criteria in § 923.84 and do not raise issues under any federal laws, as described in § 923.85:

(1) Editorial or non-substantive changes (*e.g.,* citation changes, minor technical changes, or changes to state agency name) to state laws, regulations, enforceable policies, local government coastal management programs or plans that contain enforceable policies, and other authorities;

(2) Changes to special area management plans that do not change a state's coastal zone boundary, enforceable policies or geographic location descriptions, and are not otherwise used by the state for federal consistency review;

(3) Changes to the organization of a state's management program if the management program's structure and responsibilities will remain intact; and

(4) Changes to enforceable policies previously approved by NOAA that make minor substantive revisions consistent with the scope and application of the previously approved enforceable policy. If the proposed changes are not consistent with the scope and application of the previously approved enforceable policy, then NOAA shall more closely review the changes to ensure they satisfy the decision criteria.

(c) Any program change that is not described in paragraph (b) of this section shall be reviewed by NOAA to ensure the state's management program will remain approvable if the proposed

program change is approved. These changes include:

(1) *Changes to the five program approval areas, including:* Uses Subject to Management (subpart B of this part); Special Management Areas (subpart C of this part); Boundaries (subpart D of this part); Authorities and Organization (subpart E of this part); and Coordination, Public Involvement and National Interest (subpart F of this part);

(2) Changes to enforceable policies, including modifications, additions and deletions;

(3) Changes to provisions that are not enforceable policies, but which a state may use to evaluate the scope or applicability of an enforceable policy (*e.g.,* definitions, advisory statements);

(4) Changes to local government coastal management programs or plans if those local programs or plans contain enforceable policies that the state uses for federal consistency review. States are not required to submit program changes for local government coastal management programs or plans that do not contain enforceable policies for federal consistency review; and

(5) Changes or additions to the state's federal consistency list or geographic location descriptions (part 930 of this subchapter);

(6) Changes or additions to Necessary Data and Information (930.58 of this subchapter).

(d) Changes to state Clean Air Act (CAA) and Clean Water Act (CWA) Pollution Control Requirements. Pursuant to section 307(f) of the Act, requirements established by the CWA (33 U.S.C. 1251–1387) and the CAA (42 U.S.C. 7401–7671), or established by the Federal Government or by any state or local government pursuant to the CWA and CAA shall be incorporated in state management programs and shall be the water pollution control and air pollution control requirements applicable to such management program. Therefore, states are not required to submit as program changes any changes to state CAA and CWA provisions.

§ 923.83 Program change materials.

(a) All program changes submitted to NOAA shall be submitted in accordance with § 923.81. Using the Program Change Form, a state shall provide a brief description of the proposed program change(s) and a current version of the document(s) containing the program change (*e.g.,* text of the revised statute, regulation, policy, map, etc.). States shall use the Program Change Form to provide information for:

(1) Changes to the five program approval areas. States shall indicate if the proposed program change(s) affect any of the five management program approval areas under this part:

(i) Uses Subject to Management (subpart B);

(ii) Special Management Areas (subpart C);

(iii) Boundaries (subpart D);

(iv) Authorities and Organization (subpart E); or

(v) Coordination, Public Involvement and National Interest (subpart F).

The state shall refer to its program approval findings and any other relevant documents and make a statement that, to the best of the state's knowledge, its management program would continue to satisfy these five areas if the proposed changes are approved by NOAA.

(2) Changes or additions to enforceable policies. States shall identify new, revised or deleted enforceable policies and describe the:

(i) Title of the policy or statutory section, if applicable;

(ii) If previously approved by NOAA, whether the proposed policy revisions are consistent with the scope and application of the previously approved version;

(iii) State legal citation for the policy (do not use public law numbers);

(iv) Date the policy was last updated by the state;

(v) Date the policy was last approved by NOAA; and

(vi) State enforceable mechanism that makes the policy enforceable under state law. The phrase ''enforceable mechanism'' means a state authority that makes an enforceable policy legally binding under state law, as described in this subpart and § 930.11(h) of this subchapter. Examples of an enforceable mechanism include state statutes, regulations, permitting programs, local government ordinances or court decisions. If an enforceable mechanism is changed so that an enforceable policy is no longer legally binding under state law, then the enforceable policy shall be submitted as a program change with a new underlying state enforceable mechanism; otherwise the policy is no longer enforceable for purposes of state CZMA federal consistency reviews under part 930 of this subchapter.

(3) Changes or additions to the state's federal consistency list or geographic location descriptions.

(i) For each new or revised listed federal action, states shall describe the:

(A) type of federal action;

(B) specific federal statutory authority;

(C) responsible federal agency; and

(D) reasonably foreseeable effects to the uses and resources of the state's coastal zone (§ 923.84(d) of this part).

(ii) For each new or revised geographic location description, states shall describe the:

(A) geographic location description, using specific geographic boundaries;

(B) listed federal actions to be included within a geographic location description; and

(C) reasonably foreseeable effects to the uses and resources of the state's coastal zone.

(iii) Exception for state and federal agreements made as part of a regional ocean plan prepared by a Regional Planning Body under the National Ocean Policy Executive Order 13547 (75 FR 43022 (July 22, 2010)). Geographic location descriptions and changes to state lists of federal license or permit activities that describe general concurrences for minor federal license or permit activities resulting from state and federal agency agreements as part of a Regional Planning Body's regional ocean plan, and agreed to by NOAA through the Regional Planning Body process, shall be part of a state's management program once the Regional Planning Body's regional ocean plan is approved by the Regional Planning Body and certified by the National Ocean Council. No further submission to NOAA shall be required; the requirements of § 930.53 of this subchapter and this part for notification to federal agencies and the public shall be met by the Regional Planning Body process.

(4) Changes to Necessary Data and Information. States shall describe any changes or additions to Necessary Data and Information approved by NOAA in accordance with § 930.58 of this subchapter and explain why such information is necessary in order for the state to commence its federal consistency review period.

(5) NOAA's decision criteria. The state shall indicate that the program change meets each of NOAA's decision criteria in § 923.84.

(6) Impacts relating to other federal laws. The state shall describe whether and how the program change will impact the following:

(i) Resources or interests of any federally-recognized American Indian or Alaska Native tribal government.

(ii) Threatened or endangered species listed under the federal Endangered Species Act (ESA);

(iii) Historic properties designated under the National Historic Preservation Act (NHPA);

(iv) Essential fish habitat designated under the Magnuson Stevens Fishery Conservation and Management Act (MSFCMA);

(v) Marine mammals managed under the Marine Mammal Protection Act (MMPA); and

(vi) Other resources managed under other federal statutes.

(7) The state shall identify the state's Web site where the public notices for the notification and submission requests are, or will be, located and where, if applicable, state documents related to the request may be viewed.

(8) The state shall submit to NOAA any substantive correspondence between the state and federal agencies (not including NOAA's Office for Coastal Management) concerning the development of the changes that are the subject of the program change request.

(9) The state shall indicate if the program change was developed pursuant to section 309 of the Act (16 U.S.C. 1456b—Coastal zone enhancement grants) and, if so, shall state the strategy title and years the strategy was carried out.

(10) The state shall indicate if the program change was developed as a necessary action pursuant to section 312 of the Act (16 U.S.C. 1458—Review of performance) and, if so, shall briefly describe the necessary action.

§ 923.84 Program change decision criteria.

(a) NOAA shall review all program changes on a case-by-case basis. NOAA shall determine whether a management program, if changed, would continue to satisfy the applicable program approval criteria of CZMA § 306(d) and subparts B through F of this part and the requirements of this subpart (subpart H).

(b) Enforceable policies. In order for NOAA to approve the incorporation of a new or revised enforceable policy into a state's management program, the policy shall:

(1) Be legally binding under state law;

(2) Contain standards of sufficient specificity to guide public and private uses. A policy is not enforceable if it merely directs a state agency to develop regulations or standards.

(i) Definitions, procedures and information requirements are essential elements of determining compliance with regulatory and permit standards. As such, a state law or regulation that contains numerous standards, definitions, procedures, and information requirements may be considered enforceable in its entirety after consultation with NOAA. If NOAA determines that a law or regulation may be considered enforceable in its entirety, a state does not have to identify non-enforceable parts of the law or regulation.

(3) Apply only to areas and/or entities under state jurisdiction;

(4) Not refer to or otherwise purport to apply to federal agencies, federal lands or federal waters. The Act does not authorize states to establish regulatory standards for federal agencies or for federal lands or waters. A state policy that would regulate or otherwise establish standards for federal agencies or federal lands or waters shall not meet the Act's definition of ''enforceable policy'' (*i.e.,* legally binding under state law) under 16 U.S.C. 1453(6a). States apply their NOAA-approved enforceable policies to federal actions, regardless of location, through CZMA federal consistency reviews under 16 U.S.C. 1456 and part 930 of this subchapter;

(5) Not, on its face, be preempted by federal law. If a state policy seeks to regulate an activity where state regulation is preempted by federal law, the policy is not legally binding under state law and shall not be an enforceable policy under 16 U.S.C. 1453(6a). Policies previously approved by NOAA as enforceable policies shall no longer be enforceable if federal law enacted after NOAA's approval subsequently preempts the state policy;

(6) Not incorporate by reference other state or local requirements that are not identified, described and evaluated as part of the program change request. Any state or local requirements incorporated by reference shall not be applicable for federal consistency review purposes unless separately approved by NOAA as enforceable policies;

(7) Not discriminate against a particular type of activity or entity. Enforceable policies shall be applied to all relevant public and private entities that would have similar coastal effects. Enforceable policies may be specific to a particular type of activity or entity if NOAA agrees that a state has demonstrated that the activity or entity present unique circumstances; or

(8) Not adversely affect the national interest in the CZMA objectives described in 16 U.S.C. 1451 and 1452.

(c) Effect of Prior Program Change Approvals. If enforceable policies previously approved by NOAA become obsolete or non-enforceable through application of subsequently enacted state or federal law, such policies will no longer be enforceable for purposes of CZMA federal consistency review. For example, a state law change may repeal a previous policy or may change the policy in a manner that changes the scope and application of the policy. In such cases, the previously approved enforceable policy is no longer applicable under state law and the new or revised policy is not applicable for federal consistency purposes until that policy has been submitted by the state as a program change and approved by NOAA. A previously approved enforceable policy may also become non-enforceable and no longer legally binding under state law if subsequent federal law preempts state regulation of a particular activity.

(d) Changes to a management program's federal consistency list or a new or revised geographic location description under part 930 of this subchapter, subparts C, D, E, F or I. For changes to a management program's list of federal actions or a new or revised geographic location description, the state's effects analysis shall be based on information that would allow NOAA to find that the listed activity, either within the state's coastal zone or within a geographic location described outside the state's coastal zone, would have reasonably foreseeable effects on the uses or resources of the state's coastal zone. A state's analysis asserting impacts to uses or resources outside of the coastal zone shall not, by itself, demonstrate a coastal effect; rather, the state shall describe a causal connection of how an impact outside the coastal zone could result in a coastal effect. A state's effects analysis shall not be based on unsupported conclusions, speculation or the mere existence of coastal uses or resources within a geographic location. A state's coastal effects analysis shall, to the extent practicable, identify:

(1) The affected uses (*e.g.,* commercial and recreational fishing, boating, tourism, shipping, energy facilities) and resources (*e.g.,* fish, marine mammals, reptiles, birds, landmarks).

(2) Where and in what densities the uses and resources are found.

(3) How the state has a specific interest in the resource or use. Be specific in showing their connection to the coastal zone of the state (*e.g.,* economic values, harvest amounts, vulnerabilities, seasonal information relevant to the proposed activity).

(4) Where the proposed activity overlaps with these resources, uses and values.

(5) Impacts to the resources or uses from the proposed activity.

(6) The causal connection to the proposed activity, including how the impacts from the activity results in reasonably foreseeable effects on the state's coastal uses or resources.

(7) Why any proposed mitigation may be inadequate.

(8) Empirical data and information that supports the effects analysis and: can be shown to be reliable; visualizes the affected area, resources and uses with maps; and shows values, trends and vulnerabilities.

§ 923.85 Procedural requirements of other Federal law.

(a) NOAA shall determine on a case-by-case basis whether each program change requires NOAA to take additional actions under any other federal requirement described below.

(1) If a state's program change will affect the resources or interests of any federally-recognized American Indian or Alaska Native tribal government (tribe), NOAA shall contact the affected tribe(s) and determine if Government-to-Government consultation is desired under Executive Order 13175 (Nov. 6, 2000).

(2) If, for the purposes of ESA, NHPA, MSFCMA or MMPA compliance, NOAA determines that a state's program change will have effects on listed threatened or endangered species, historic properties, essential fish habitat or marine mammals, then NOAA shall determine if consultation is needed with the applicable federal agency under the ESA, NHPA, MSFCMA and MMPA.

(3) When NOAA determines whether to consult under other federal statutes or tribal executive orders, NOAA's ability to require changes to a state's proposed program change are limited by the following:

(i) Once NOAA approves a state's management program, NOAA cannot require a state to change its program. NOAA can, through periodic evaluations of a state's management program under section 312 of the Act, establish necessary actions if NOAA finds a state is not adhering to its NOAA-approved program, but NOAA can only recommend that a state change its program to create a different state standard or to address emerging issues; and

(ii) NOAA can approve or disapprove a program change request. When NOAA reviews a program change, NOAA has a limited ability to require a state to make changes to state policies. If NOAA disapproves a program change request, this does not require a state to change state law. Therefore, there is no effect from NOAA's denial on the implementation of state law at the state (or local government) level. NOAA's denial means the disapproved state policy is not part of the state's NOAA-approved management program and cannot be used for CZMA federal consistency purposes. NOAA cannot use a program change to require changes to other parts of a state's management program.

[FR Doc. 2016–26680 Filed 11–7–16; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. FDA–2012–D–1002]

Questions and Answers Regarding Food Facility Registration (Seventh Edition); Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of availability.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the availability of a draft guidance for industry entitled ''Questions and Answers Regarding Food Facility Registration (Seventh Edition): Guidance for Industry.'' This draft guidance contains 15 sections of a multisection guidance intended to provide updated information relating to the food facility registration requirements in the Federal Food, Drug, and Cosmetic Act (the FD&C Act).

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that we consider your comment on the draft guidance before we begin work on the final version of the guidance, submit either electronic or written comments on the draft guidance by February 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–2012–D–1002 for the draft guidance for industry entitled ''Questions and Answers Regarding Food Facility Registration (Seventh Edition).'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

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

regulatoryinformation/dockets/default.htm.

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

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

FOR FURTHER INFORMATION CONTACT: Courtney Buchanan, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2487.

SUPPLEMENTARY INFORMATION:

I. Background

We are announcing the availability of a draft guidance for industry entitled ''Questions and Answers Regarding Food Facility Registration (Seventh Edition): Guidance for Industry.'' We are issuing the draft guidance consistent with our good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of the FDA on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternate approach if it satisfies the requirements of the applicable statutes and regulations.

On October 10, 2003, FDA issued an interim final rule (68 FR 58893) to implement amendments to the FD&C Act made by the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) (Pub. L. 107–188). Section 415 of the FD&C Act (21 U.S.C. 350d) requires domestic and foreign facilities that manufacture, process, pack, or hold food for human or animal consumption in the United States to register with FDA by December 12, 2003. Section 102 of the FDA Food Safety Modernization Act (FSMA) (Pub. L. 111–353), enacted on January 4, 2011, amended section 415 of the FD&C Act to, among other things, require facilities engaged in manufacturing, processing, packing, or holding food for consumption in the United States to submit additional registration information to FDA. Section 102 of FSMA also directed FDA to amend the definition of ''retail food establishment'' in 21 CFR 1.227. On July 14, 2016, FDA issued a final rule (Registration Final Rule) to amend and update FDA's registration regulation and implement the FSMA revisions (81 FR 45912; July 14, 2016).

This draft guidance was developed to answer frequently asked questions relating to the registration requirements of section 415 of the FD&C Act. The first edition of the guidance was issued as Level 2 guidance consistent with our good guidance practices regulation (21 CFR 10.115) and was made available on FDA's Web site on December 4, 2003. The second, third, fourth, and fifth editions of the guidance were issued as Level 1 guidance documents under 21 CFR 10.115 and were made available on FDA's Web site on January 12, 2004; February 17, 2004; August 6, 2004; and December 17, 2012, respectively. The sixth edition of the guidance was issued as Level 1 guidance and included one additional question and answer relating to a proposed amendment to the ''farm'' definition in 21 CFR 1.227 (see 79 FR 58523; September 29, 2014). Since publication of the sixth edition of the guidance, we have issued the Registration Final Rule. In addition, we have issued the Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food final rule (Preventive Controls for Human Food Final Rule) (80 FR 55908; September 17, 2015) that, among other things, revised the definition of ''farm'' in 21 CFR 1.227. We have also issued the Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Food for Animals final rule (Preventive Controls for Animal Food Final Rule) (80 FR 56169; September 17, 2015). We are issuing a seventh edition of the guidance to add information relating to the Registration Final Rule and the revised ''farm'' definition, as well as to address questions received from stakeholders since publication of the sixth edition. We are reserving two sections in the draft guidance and will issue a revised draft guidance at a later date that includes those reserved sections. The sections that we are announcing are as follows:

- Section A. Who Must Register?
- Section D: When Must You Register or Renew Your Registration?
- Section E: How and Where Do You Register or Renew Your Registration?
- Section F: What Information is Required in the Registration?
- Section G: What Optional Items are Included in the Registration?
- Section H: How and When Do You Update Your Facility's Registration Information?
- Section I: How and When Do You Cancel Your Facility's Registration Information?
- Section J: What Other Registration Requirements Apply?
- Section K: What are the Consequences of Failing to Register, Renew, Update, or Cancel Your Registration?
- Section L: What Does Assignment of a Registration Number Mean?
- Section M: Is Food Registration Information Available to the Public?
- Section N: Waiver Request
- Section O: General Registration Questions
- Section P: Suspension of Registration
- Section Q: Compliance Dates

We intend to announce the availability for public comment of the remaining sections of the draft guidance in a revised draft guidance.

This edition of the draft guidance also revises information in existing questions and answers, removes some questions and answers, and makes editorial changes (*e.g.,* we reorganized existing questions and answers) to improve clarity. For the revised questions and answers, we are not adding a date indicating when the questions and answers were revised. As in the previous editions, the following indicators are used to help users identify revisions: (1) The guidance is identified as a revision of a previously issued document; (2) the revision date appears on the cover of the guidance; (3) the edition number of the guidance is included in its title; and (4) questions and answers that have been added are identified as such in the body of the guidance. In addition, we indicated certain sections in the draft guidance as ''Reserved.''

II. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/Food/GuidanceRegulation/FoodFacilityRegistration/default.htm* or *http://www.regulations.gov.* Use the FDA Web site listed in the previous sentence to find the most current version of the guidance.

III. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of

Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR 1.230 through 1.235 and 21 CFR 1.245 have been approved under OMB control number 0910–0502.

Dated: November 3, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–26930 Filed 11–7–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 573

[Docket No. FDA–2014–F–0452]

Novus International, Inc.; Filing of Food Additive Petition (Animal Use)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of petition.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Novus International, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of poly (2-vinylpyridine-co-styrene) as a nutrient protectant for methionine hydroxy analog in animal food for beef cattle, dairy cattle, and replacement dairy heifers. Additionally, the petition proposes that the food additive regulations be amended to provide for the safe use of ethyl cellulose as a binder for methionine hydroxy analog to be incorporated into animal food.

DATES: Submit either electronic or written comments on the petitioner's environmental assessment by December 8, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comment, 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–F–0452 for ''Food Additives Permitted in Feed and Drinking Water of Animals; 2-Vinylpyridine-Co-Styrene.'' 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 comment 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: Carissa Doody, Center for Veterinary Medicine (HFV–228), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–6283, *carissa.doody@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5) (21 U.S.C. 348(b)(5)), notice is given that a food additive petition (FAP 2295) has been filed by Novus International, Inc., 20 Research Park Dr., Saint Charles, MO 63304. The petition proposes to amend part 573 (21 CFR part 573) *Food Additives Permitted in Feed and Drinking Water of Animals* to provide for the safe use of poly (2-vinylpyridine-co-styrene) as a nutrient protectant for methionine hydroxy analog in animal food for beef cattle, dairy cattle, and replacement dairy heifers, and to provide for the safe use of ethyl cellulose as a binder for methionine hydroxy analog to be incorporated into animal food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations issued under the National Environmental Policy Act (40 CFR 1501.4(b)), the Agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Division of Dockets Management (see **ADDRESSES**) for public review and comment. Interested persons may submit to the Division of Dockets Management (see **DATES** and **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the

heading of this document. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the Agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the Agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.51(b).

Dated: November 2, 2016.

Tracey H. Forfa,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 2016–26922 Filed 11–7–16; 8:45 am]

BILLING CODE 4164–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2012–0933; FRL–9954–92–Region 8]

Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 2008 Lead, 2008 Ozone, 2010 NO_2, 2010 SO_2, and 2012 $PM_{2.5}$ National Ambient Air Quality Standards; Wyoming

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve elements of State Implementation Plan (SIP) revisions from the State of Wyoming to demonstrate the State meets infrastructure requirements of the Clean Air Act (Act or CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for ozone on March 12, 2008, lead (Pb) on October 15, 2008, nitrogen dioxide (NO_2) on January 22, 2010, sulfur dioxide (SO_2) on June 2, 2010, and fine particulate matter ($PM_{2.5}$) on December 14, 2012. The EPA is also proposing to approve SIP revisions the State submitted regarding state boards. Section 110(a) of the CAA requires that each state submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by the EPA.

DATES: Written comments must be received on or before December 8, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2012–0933 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: Abby Fulton, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6563, *fulton.abby@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

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

1. *Submitting Confidential Business Information (CBI).* Do not submit CBI to the EPA through *http://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD–ROM that you mail to the EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** volume, date, and page number);
- Follow directions and organize your comments;
- Explain why you agree or disagree;
- Suggest alternatives and substitute language for your requested changes;
- Describe any assumptions and provide any technical information and/or data that you used;
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced;
- Provide specific examples to illustrate your concerns, and suggest alternatives;
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats; and,
- Make sure to submit your comments by the comment period deadline identified.

II. Background

On March 12, 2008, the EPA promulgated a new NAAQS for ozone, revising the levels of the primary and secondary eight-hour ozone standards from 0.08 parts per million (ppm) to 0.075 ppm (73 FR 16436, March 27, 2008). Subsequently, on October 15, 2008, the EPA revised the level of the primary and secondary Pb NAAQS from 1.5 micrograms per cubic meter ($\mu g/m^3$) to 0.15 $\mu g/m^3$ (73 FR 66964, Nov. 12, 2008). On January 22, 2010, the EPA promulgated a new one-hour primary NAAQS for NO_2 at a level of 100 parts per billion (ppb) while retaining the annual standard of 53 ppb. The 2010 NO_2 NAAQS is expressed as the three-year average of the 98th percentile of the annual distribution of daily maximum one-hour average concentrations. The secondary NO_2 NAAQS remains unchanged at 53 ppb (75 FR 6474, Feb. 9, 2010). On June 2, 2010, the EPA promulgated a revised primary SO_2 standard at 75 ppb, based on a three-year average of the annual 99th percentile of one-hour daily maximum concentrations (75 FR 35520, June 22, 2010). Finally, on December 14, 2012, the EPA promulgated a revised annual $PM_{2.5}$ standard by lowering the level to 12.0 $\mu g/m^3$ and retaining the 24-hour $PM_{2.5}$ standard at a level of 35 $\mu g/m^3$ (78 FR 3086, Jan. 15, 2013).

Under sections 110(a)(1) and (2) of the CAA, states are required to submit infrastructure SIPs to ensure their SIPs provide for implementation, maintenance and enforcement of the NAAQS. These submissions must contain any revisions needed for meeting the applicable SIP requirements of section 110(a)(2), or certifications that their existing SIPs for $PM_{2.5}$, ozone, Pb, NO_2, and SO_2 already meet those requirements. The EPA highlighted this

statutory requirement in an October 2, 2007, guidance document entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards'' (2007 Memo). On September 25, 2009, the EPA issued an additional guidance document pertaining to the 2006 $PM_{2.5}$ NAAQS entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS)'' (2009 Memo), followed by the October 14, 2011, ''Guidance on Infrastructure SIP Elements Required Under Sections 110(a)(1) and (2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)'' (2011 Memo). Most recently, the EPA issued ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)'' on September 13, 2013 (2013 Memo).

III. What is the scope of this rulemaking?

The EPA is acting upon the SIP submissions from Wyoming that address the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2008 ozone, 2008 Pb, 2010 NO_2, 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS. The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions ''within three years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),'' and these SIP submissions are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon the EPA taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must address.

The EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as ''infrastructure SIP'' submissions. Although the term ''infrastructure SIP'' does not appear in the CAA, the EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as ''nonattainment SIP'' or ''attainment plan SIP'' submissions to address the nonattainment planning requirements of part D of title I of the CAA; ''regional haze SIP'' submissions required by the EPA rule to address the visibility protection requirements of CAA section 169A; and nonattainment new source review (NSR) permit program submissions to address the permit requirements of CAA, title I, part D.

Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submissions, and section 110(a)(2) provides more details concerning the required contents of these submissions. The list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive program provisions, and some of which pertain to requirements for both authority and substantive program provisions.[1] The EPA therefore believes that while the timing requirement in section 110(a)(1) is unambiguous, some of the other statutory provisions are ambiguous. In particular, the EPA believes that the list of required elements for infrastructure SIP submissions provided in section 110(a)(2) contains ambiguities concerning what is required for inclusion in an infrastructure SIP submission.

Examples of some of these ambiguities and the context in which the EPA interprets the ambiguous portions of section 110(a)(1) and 110(a)(2) are discussed at length in our notice of proposed rulemaking: Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 1997 and 2006 $PM_{2.5}$, 2008 Lead, 2008 Ozone, and 2010 NO_2 National Ambient Air Quality Standards; South Dakota (79 FR 71040, Dec. 1, 2014) under ''III. What is the Scope of this Rulemaking?''

With respect to certain other issues, the EPA does not believe that an action on a state's infrastructure SIP submission is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include: (i) Existing provisions related to excess emissions from sources during periods of startup, shutdown, or malfunction (SSM) that may be contrary to the CAA and the EPA's policies addressing such excess emissions; (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by the EPA; and (iii) existing provisions for Prevention of Significant Deterioration (PSD) programs that may be inconsistent with current requirements of the EPA's ''Final NSR Improvement Rule,'' 67 FR 80186, Dec. 31, 2002, as amended by 72 FR 32526, June 13, 2007 (''NSR Reform'').

IV. What infrastructure elements are required under sections 110(a)(1) and (2)?

CAA section 110(a)(1) provides the procedural and timing requirements for SIP submissions after a new or revised NAAQS is promulgated. Section 110(a)(2) lists specific elements the SIP must contain or satisfy. These infrastructure elements include requirements such as modeling, monitoring and emissions inventories, which are designed to assure attainment and maintenance of the NAAQS. The elements that are the subject of this action are listed below.

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.
- 110(a)(2)(D): Interstate transport.
- 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local governments and regional agencies.
- 110(a)(2)(F): Stationary source monitoring and reporting.
- 110(a)(2)(G): Emergency powers.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(J): Consultation with government officials; public notification; and PSD and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

A detailed discussion of each of these elements is contained in the next section.

Two elements identified in section 110(a)(2) are not governed by the three-year submission deadline of section 110(a)(1) and are therefore not addressed in this action. These elements relate to part D of Title I of the CAA, and submissions to satisfy them are not due within three years after promulgation of a new or revised NAAQS, but rather are

[1] For example: Section 110(a)(2)(E)(i) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a SIP-approved program to address certain sources as required by part C of title I of the CAA; and section 110(a)(2)(G) provides that states must have legal authority to address emergencies as well as contingency plans that are triggered in the event of such emergencies.

due at the same time nonattainment area plan requirements are due under section 172. The two elements are: (1) Section 110(a)(2)(C) to the extent it refers to permit programs (known as ''nonattainment NSR'') required under part D, and (2) section 110(a)(2)(I), pertaining to the nonattainment planning requirements of part D. As a result, this action does not address infrastructure elements related to the nonattainment NSR portion of section 110(a)(2)(C) or related to 110(a)(2)(I). Furthermore, the EPA interprets the CAA section 110(a)(2)(J) provision on visibility as not being triggered by a new NAAQS because the visibility requirements in part C, title 1 of the CAA are not changed by a new NAAQS.

V. How did Wyoming address the infrastructure elements of sections 110(a)(1) and (2)?

The Wyoming Department of Environmental Quality (Department or WDEQ) submitted certification of Wyoming's infrastructure SIP for the 2008 Pb NAAQS on October 12, 2011; 2008 ozone NAAQS on February 6, 2014; 2010 NO_2 NAAQS on January 24, 2014; 2010 SO_2 NAAQS on March 6, 2015; and 2012 $PM_{2.5}$ on June 24, 2016. Infrastructure SIPs were taken out for public notice and Wyoming provided an opportunity for public hearing, as indicated in the cover letter of each certification (available within this docket). Wyoming's infrastructure certifications demonstrate how the State, where applicable, has plans in place that meet the requirements of section 110 for the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS. These plans reference the Wyoming Air Quality Standards and Regulations (WAQSR) and Wyoming Statutes. These submittals are available within the electronic docket for today's proposed action at *www.regulations.gov.* The WAQSR and Wyoming Statutes referenced in the submittals are publicly available at *http://soswy.state.wy.us/Rules/default.aspx* and *http://legisweb.state.wy.us/LSOWEB/wyStatutes.aspx.* Air pollution control regulations and statutes that have been previously approved by the EPA and incorporated into the Wyoming SIP can be found at 40 CFR 52.2620.

VI. Analysis of the State Submittals

1. *Emission limits and other control measures:* Section 110(a)(2)(A) requires SIPs to include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this Act.

The State's submissions for the 2008 Pb, 2008 ozone 2010 NO_2, 2010 SO_2, and 2012 p.m.$_{2.5}$ infrastructure requirements cite three non-regulatory documents (*e.g.,* Control Strategy, Source Surveillance, and Compliance Schedule) which were approved by EPA on May 31, 1972 (37 FR 10842). The State's submissions also cite regulatory documents included in Chapters 1, 3, 4, 8, 10 and 13 of the WAQSR. The SIP approved non-regulatory documents cited in combination with multiple SIP-approved state air quality regulations within WAQSR and cited in Wyoming's certifications, provide enforceable emission limitations and other control measures, means of techniques, schedules for compliance, and other related matters necessary to meet the requirements of the CAA section 110(a)(2)(A) for the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS, subject to the following clarifications.

First, this infrastructure element does not require the submittal of regulations or emission limitations developed specifically for attaining the 2008 Pb, 2008 ozone 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS. Wyoming's certifications (contained within this docket) generally list provisions and enforceable control measures within its SIP which regulate pollutants through various programs. This includes its stationary source permit program which requires sources to demonstrate that emissions will not cause or contribute to a violation of any NAAQS. This suffices, in the case of Wyoming, to meet the requirements of section 110(a)(2)(A) for the 2008 Pb, 2008 ozone 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

Second, as previously discussed, the EPA is not proposing to approve or disapprove any existing state rules with regard to director's discretion or variance provisions. A number of states have such provisions which are contrary to the CAA and existing EPA guidance (52 FR 45109, Nov. 24, 1987), and the agency plans to take action in the future to address such state regulations. In the meantime, the EPA encourages any state having a director's discretion or variance provision which is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

Finally, in this action, the EPA is also not proposing to approve or disapprove any existing state provision with regard to excess emissions during SSM of operations at a facility. A number of states have SSM provisions which are contrary to the CAA and existing EPA guidance [2] and the agency is addressing such state regulations separately (80 FR 33840, June 12, 2015).

Therefore, the EPA is proposing to approve Wyoming's infrastructure SIP for the 2008 Pb, 2008 ozone 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS with respect to the general requirement in section 110(a)(2)(A) to include enforceable emission limitations and other control measures, means, or techniques to meet the applicable requirements of this element.

2. *Ambient air quality monitoring/data system:* Section 110(a)(2)(B) requires SIPs to ''provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary'' to ''(i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator.''

The State's submissions cite five non-regulatory documents (*e.g.,* Air Quality Surveillance, Air Quality Surveillance Network, Implementation Plan for Lead, Wyoming Ambient Air Monitoring Network Plan, and the EPA Performance Partnership Agreement). The State's submissions also cite regulatory documents included in Chapters 1 and 2 of the WAQSR. Provisions contained in Chapter 6, Section 2(b)(i) of the WAQSR provide the legal authority and framework for the Air Quality Division (AQD) Administrator to require that permit applicants submit adequate monitoring data. Additionally, Chapter 6, Section 2(f)(iv) enables the AQD Administrator to impose reasonable conditions upon an approval to construct, modify, or operate, including ambient air quality monitoring. Additionally, the State of Wyoming submits data to the EPA's Air Quality System database in accordance with 40 CFR 58.16. Finally, Wyoming's 2015 Annual Monitoring Network Plan was approved through a letter dated September 24, 2015 (available within the docket). The State provides the EPA with prior notification when changes to its monitoring network or plan are being considered.

We find that Wyoming's SIP and practices are adequate for the ambient air quality monitoring and data system requirements and therefore propose to approve the infrastructure SIP for the

[2] Steven Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation, Memorandum to the EPA Air Division Directors, ''State Implementation Plans (SIPs): Policy Regarding Emissions During Malfunctions, Startup, and Shutdown.'' (September 20, 1999).

2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS for this element.

3. *Program for enforcement of control measures:* Section 110(a)(2)(C) requires SIPs to ''include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that [NAAQS] are achieved, including a permit program as required in parts C and D.''

To generally meet the requirements of section 110(a)(2)(C), the State is required to have SIP-approved PSD, nonattainment NSR, and minor NSR permitting programs that are adequate to implement the 2008 Pb, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS. The EPA already proposed approval of section 110(a)(2)(C) for the 2008 ozone NAAQS in a separate rulemaking at 81 FR 53365 (Aug. 12, 2016). As explained elsewhere in this action, the EPA is not evaluating nonattainment related provisions, such as the nonattainment NSR program required by part D of the Act. The EPA is evaluating the State's PSD program as required by part C of the Act, and the State's minor NSR program as required by section 110(a)(2)(C).

Enforcement of Control Measures Requirement

Wyoming's Rule (02) II, Legal Authority, which the EPA approved into Wyoming's SIP,[3] allows the State to enforce applicable laws, regulations, and standards; to seek injunctive relief; and to provide authority to prevent construction, modification, or operation of any stationary source at any location where emissions from such source will prevent the attainment or maintenance of a national standard or interfere with prevention of significant deterioration requirements.

PSD Requirements

With respect to Elements (C) and (J), the EPA interprets the CAA to require each state to make an infrastructure SIP submission for a new or revised NAAQS demonstrating that the air agency has a complete PSD permitting program meeting the current requirements for all regulated NSR pollutants. The requirements of Element D(i)(II) prong 3 may also be satisfied by demonstrating the air agency has a complete PSD permitting program that applies to all regulated NSR pollutants. Wyoming has shown that it currently has a PSD program in place that covers all regulated NSR pollutants, including greenhouse gases (GHGs).

On July 25, 2011 (76 FR 44265), we approved a revision to the Wyoming PSD program that addressed the PSD requirements of the Phase 2 Ozone Implementation Rule promulgated on November 29, 2005 (70 FR 71612). As a result, the approved Wyoming PSD program meets the current requirements for ozone.

With respect to GHGs, on June 23, 2014, the United States Supreme Court addressed the application of PSD permitting requirements to GHG emissions. *Utility Air Regulatory Group* v. *Environmental Protection Agency,* 134 S.Ct. 2427 (2014). The Supreme Court held that the EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD permit. The Court also held that the EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, (anyway sources) contain limitations on GHG emissions based on the application of Best Available Control Technology (BACT).

In accordance with the Supreme Court decision, on April 10, 2015, the U.S. Court of Appeals for the District of Columbia Circuit (the D.C. Circuit) in *Coalition for Responsible Regulation* v. *EPA,* 606 F. App'x. 6, at *7–8 (D.C. Cir. April 10, 2015), issued an amended judgment vacating the regulations that implemented Step 2 of the EPA's PSD and Title V Greenhouse Gas Tailoring Rule, but not the regulations that implement Step 1 of that rule. Step 1 of the Tailoring Rule covers sources that are required to obtain a PSD permit based on emissions of pollutants other than GHGs. Step 2 applied to sources that emitted only GHGs above the thresholds triggering the requirement to obtain a PSD permit. The amended judgment preserves, without the need for additional rulemaking by the EPA, the application of the BACT requirement to GHG emissions from Step 1 or ''anyway sources.''[4] With respect to Step 2 sources, the D.C. Circuit's amended judgment vacated the regulations at issue in the litigation, including 40 CFR 51.166(b)(48)(v), ''to the extent they require a stationary source to obtain a PSD permit if greenhouse gases are the only pollutant (i) that the source emits or has the potential to emit above the applicable major source thresholds, or (ii) for which there is a significant emission increase from a modification.''

The EPA is planning to take additional steps to revise the federal PSD rules in light of the Supreme Court and subsequent D.C. Circuit opinion. Some states have begun to revise their existing SIP-approved PSD programs in light of these court decisions, and some states may prefer not to initiate this process until they have more information about the planned revisions to the EPA's PSD regulations. The EPA is not expecting states to have revised their PSD programs in anticipation of the EPA's planned actions to revise its PSD program rules in response to the court decisions.

At present, the EPA has determined that Wyoming's SIP is sufficient to satisfy Elements (C), (D)(i)(II) prong 3 and (J) with respect to GHGs. This is because the PSD permitting program previously approved by the EPA into the SIP continues to require that PSD permits issued to ''anyway sources'' contain limitations on GHG emissions based on the application of BACT. The EPA most recently approved revisions to Wyoming's PSD program on December 6, 2013 (78 FR 73445). The approved Wyoming PSD permitting program still contains some provisions regarding Step 2 sources that are no longer necessary in light of the Supreme Court decision and D.C. Circuit's amended judgment. Nevertheless, the presence of these provisions in the previously-approved plan does not render the infrastructure SIP submission inadequate to satisfy Elements (C), (D)(i)(II) prong 3 and (J). The SIP contains the PSD requirements for applying the BACT requirement to greenhouse gas emissions from ''anyway sources'' that are necessary at this time. The application of those requirements is not impeded by the presence of other previously-approved provisions regarding the permitting of Step 2 sources. Accordingly, the Supreme Court decision and subsequent D.C. Circuit judgment do not prevent the EPA's approval of Wyoming's infrastructure SIP as to the requirements of Elements (C), (D)(i)(II) prong 3, and (J).

Finally, we evaluate the PSD program with respect to current requirements for $PM_{2.5}$. In particular, on May 16, 2008, the EPA promulgated the rule, ''Implementation of the New Source Review Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)'' (73 FR 28321) (2008 Implementation Rule). On October 20, 2010 the EPA promulgated the rule, ''Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5

[3] *See* 40 CFR 52.2620(e), Rule No. (02) II; 41 FR 36652 (Aug. 31, 1976) (approving Wyoming's revisions to its SIP).

[4] *See* 77 FR 41066 (July 12, 2012) (rulemaking for definition of ''anyway'' sources).

Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)'' (75 FR 64864). The EPA regards adoption of these $PM_{2.5}$ rules as a necessary requirement when assessing a PSD program for the purposes of Element (C).

On January 4, 2013, the U.S. Court of Appeals, in *Natural Resources Defense Council* v. *EPA,* 706 F.3d 428 (D.C. Cir. 2013), issued a judgment that remanded the EPA's 2007 and 2008 rules implementing the 1997 $PM_{2.5}$ NAAQS. The court ordered the EPA to ''repromulgate these rules pursuant to Subpart 4 consistent with this opinion.'' *Id.* at 437. Subpart 4 of part D, Title 1 of the CAA establishes additional provisions for particulate matter nonattainment areas.

The 2008 Implementation Rule addressed by *Natural Resources Defense Council,* ''Implementation of New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$),'' (73 FR 28321, May 16, 2008), promulgated NSR requirements for implementation of $PM_{2.5}$ in nonattainment areas (nonattainment NSR) and attainment/unclassifiable areas (PSD). As the requirements of Subpart 4 only pertain to nonattainment areas, the EPA does not consider the portions of the 2008 Implementation Rule that address requirements for $PM_{2.5}$ attainment and unclassifiable areas to be affected by the court's opinion. Moreover, the EPA does not anticipate the need to revise any PSD requirements promulgated in the 2008 Implementation Rule in order to comply with the court's decision. Accordingly, the EPA's proposed approval of Wyoming's infrastructure SIP as to Elements (C), (D)(i)(II) prong 3, and (J) with respect to the PSD requirements promulgated by the 2008 Ozone Implementation rule does not conflict with the court's opinion.

The court's decision with respect to the nonattainment NSR requirements promulgated by the 2008 Implementation Rule also does not affect the EPA's action on the present infrastructure action. The EPA interprets the Act to exclude nonattainment area requirements, including requirements associated with a nonattainment NSR program, from infrastructure SIP submissions due three years after adoption or revision of a NAAQS. Instead, these elements are typically referred to as nonattainment SIP or attainment plan elements, which would be due by the dates statutorily prescribed under subpart 2 through 5 under part D, extending as far as 10 years following designations for some elements.

The second PSD requirement for $PM_{2.5}$ is contained in the EPA's October 20, 2010 rule, ''Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)'' (75 FR 64864). The EPA regards adoption of the $PM_{2.5}$ increments as a necessary requirement when assessing a PSD program for the purposes of Element (C). On July 25, 2011 (76 FR 44265), the EPA approved SIP revisions that revised Wyoming's PSD program which incorporated the 2008 Implementation Rule. The EPA approved revisions to reflect the 2010 $PM_{2.5}$ Increment Rule on December 6, 2013 (78 FR 73445). Therefore, Wyoming's SIP approved PSD program meets current requirements for $PM_{2.5}$.

Therefore, the EPA is proposing to approve Wyoming's infrastructure SIP for the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS with respect to the requirement in section 110(a)(2)(C) to include a PSD permitting program in the SIP that covers the requirements for all regulated NSR pollutants as required by part C of the Act.

Minor NSR

The State has a SIP-approved minor NSR program, adopted under section 110(a)(2)(C) of the Act. The minor NSR program is found in Chapter 6, Section 2 of the WAQSR. The EPA previously approved Wyoming's minor NSR program into the SIP (at that time as Chapter 1, Section 21), and has subsequently approved revisions to the program, and at those times there were no objections to the provisions of this program. (See, for example, 47 FR 5892, February 9, 1982). Since then, the State and the EPA have relied on the State's existing minor NSR program to assure that new and modified sources not captured by the major NSR permitting program do not interfere with attainment and maintenance of the NAAQS.

The EPA is proposing to approve Wyoming's infrastructure SIP for the 2008 Pb, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that regulates the enforcement of control measures in the SIP, and the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved.

4. *Interstate transport:* The interstate transport provisions in CAA section 110(a)(2)(D)(i) require each state to submit a SIP that prohibits emissions that will have certain adverse air quality effects in other states. CAA section 110(a)(2)(D)(i) identifies four distinct prongs related to the impacts of air pollutants transported across state lines. The two prongs under 110(a)(2)(D)(i)(I) require SIPs to contain adequate provisions to prohibit any source or other type of emissions activity within the state from emitting air pollutants that will (prong 1) contribute significantly to nonattainment in any other state with respect to any such national primary or secondary NAAQS, and (prong 2) interfere with maintenance by any other state with respect to the same NAAQS. The two prongs under 110(a)(2)(D)(i)(II) require SIPs to contain adequate provisions to prohibit emissions that will interfere with measures required to be included in the applicable implementation plan for any other state under part C (prong 3) to prevent significant deterioration of air quality or (prong 4) to protect visibility. In this action, the EPA is only addressing prong 3 of CAA section 110(a)(2)(D)(i)(II) for the 2008 Pb, 2010 SO_2, 2010 NO_2 and 2012 $PM_{2.5}$ NAAQS. All other transport prongs will be addressed in separate rulemaking actions.

Evaluation of Interference With Measures To Prevent Significant Deterioration (PSD)

With regard to the PSD portion of CAA section 110(a)(2)(D)(i)(II), this requirement may be met by a state's confirmation in an infrastructure SIP submission that new major sources and major modifications in the state are subject to a comprehensive EPA-approved PSD permitting program in the SIP that applies to all regulated NSR pollutants and that satisfies the requirements of the EPA's PSD implementation rules.[5] As noted in the discussion for infrastructure element (C) earlier in this notice, the EPA is proposing to approve CAA section 110(a)(2) element (C) for Wyoming's infrastructure SIP for the 2008 Pb, 2010 NO_2, 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS with respect to PSD requirements. As discussed in detail in that section, Wyoming's SIP meets the current PSD-related requirements of section 110(a)(2)(C). For this reason, we are also proposing to approve Wyoming's infrastructure SIP as meeting the 110(a)(2)(D)(i)(II) prong 3 (PSD) requirements for the 2008 Pb, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

In-state sources not subject to PSD for a particular NAAQS because they are in

[5] See 2013 Memo at 31.

a nonattainment area for that standard may also have the potential to interfere with PSD in an attainment or unclassifiable area of another state.[6] One way a state may satisfy prong 3 with respect to these sources is by citing an air agency's EPA-approved nonattainment NSR provisions addressing any pollutants for which the state has designated nonattainment areas. Wyoming has a SIP-approved nonattainment NSR program which ensures regulation of major sources and major modifications in nonattainment areas, and therefore satisfies prong 3 with regard to this requirement.[7]

The EPA is proposing to approve the infrastructure SIP submission with regard to the requirements of prong 3 of section 110(a)(2)(D)(i)(II) for the 2008 Pb, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

5. *Interstate and International transport provisions:* CAA section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with the applicable requirements of CAA sections 126 and 115 (relating to interstate and international pollution abatement, respectively). Specifically, section 126(a) of the CAA requires major new or modified sources to notify affected, nearby states of the source's potential impacts on air pollution. Sections 126(b) and (c) pertain to petitions affected states may seek from the Administrator of the EPA (Administrator) regarding sources violating the ''interstate transport'' provisions of section 110(a)(2)(D)(i). Section 115 of the CAA similarly pertains to international transport of air pollution.

As required by 40 CFR 51.166(q)(2)(iv), Wyoming's SIP-approved PSD program requires major new or modified sources to provide notice to states whose air quality may be impacted by the emissions of sources subject to PSD.[8] This suffices to meet the notice requirement of section 126(a).

Wyoming has no pending obligations under sections 126(c) or 115(b) of the CAA; therefore, its SIP currently meets the requirements of those sections. In summary, the SIP meets the requirements of CAA section 110(a)(2)(D)(ii), and the EPA is therefore proposing approval of this element for the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

6. *Adequate resources:* Section 110(a)(2)(E)(i) requires states to provide ''necessary assurances that the state [. . .] will have adequate personnel, funding, and authority under State law to carry out [the SIP] (and is not prohibited by any provision of federal or state law from carrying out the SIP or portion thereof).'' Section 110(a)(2)(E)(ii) also requires each state to ''comply with the requirements respecting state boards'' under CAA section 128. Section 110(a)(2)(E)(iii) requires states to provide ''necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any [SIP] provision, the State has responsibility for ensuring adequate implementation of such [SIP] provision.''

a. Sub-Elements (i) and (iii): Adequate Personnel, Funding, and Legal Authority Under State Law To Carry Out Its SIP, and Related Issues

The provisions contained in Articles 1 and 2 of the Wyoming Environmental Quality Act (WEQA) (Chapter 11, Title 35 of the Wyoming Statutes) give the State adequate authority to carry out its SIP obligations with respect to the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

With respect to funding, the State receives sections 103 and 105 grant funds through its Performance Partnership Grant along with required state matching funds to provide funding necessary to carry out Wyoming's SIP requirements.

Wyoming's Performance Partnership Agreement (available within the docket) with the EPA documents resources needed to carry out agreed upon environmental program goals, measures, and commitments, including developing and implementing appropriate SIPs for all areas of the State. Annually, states update these grant commitments based on current SIP requirements, air quality planning, and applicable requirements related to the NAAQS. Wyoming satisfactorily met all commitments agreed to in the Air Planning Agreement for fiscal year 2015. Furthermore, WAQSR Chapter 6, Section 2(a)(v), Permit for construction, modification, and operation, requires the owner and operator of each new major source or major modification to pay a fee sufficient to cover the cost of reviewing and acting on permit applications. Collectively, these rules and commitments provide evidence that the Wyoming DEQ has adequate personnel (*see* non-regulatory document, Resources Document, cited in Wyoming's certifications), funding, and legal authority to carry out the State's implementation plan and related issues.

With respect to section 110(a)(2)(E)(iii), the State does not rely upon any other local or regional government, agency or instrumentality for implementation of the SIP. Therefore, we propose to approve Wyoming's SIP as meeting the requirements of section 110(a)(2)(E)(i) and (E)(iii) for the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

b. Sub-Element (ii): State Boards

Section 110(a)(2)(E)(ii) requires each state's SIP to contain provisions that comply with the requirements of section 128 of the CAA. Section 128 contains two explicit requirements: (i) That ''any board or body which approves permits or enforcement orders under [the CAA] shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders'' under the CAA; and (ii) that ''any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.''

In our December 6, 2013 (78 FR 73445) action, we disapproved Wyoming's March 26, 2008 and August 19, 2011 infrastructure SIP submissions for the 1997 and 2006 $PM_{2.5}$ NAAQS for CAA Section 110(a)(2)(E)(ii) because the Wyoming SIP did not contain provisions meeting requirements of CAA section 128(a)(1) or (2). Under section 110(c)(1)(B), this disapproval started a two-year clock for the EPA to promulgate a federal implementation plan (FIP) to address the deficiency.

On May 31, 2016, the EPA received a submission from the State of Wyoming to address the requirements of section 128 by adopting revisions to Chapter 1, Section 16 of the Wyoming Department of Environmental Quality General Rules of Practice and Procedure. The Wyoming Environmental Quality Council approved these revisions on March 2, 2016. A copy of the submission, which includes as revisions, the addition of Section 16, Air Quality Division, State Implementation Plan, to Chapter 1, is available within this docket. These rules address board composition and conflict of interest requirements of section 128(a)(1) and (2). We propose to approve this new rule language as meeting the requirements of section 128 for the reasons explained in more detail below. Because this revision meets the requirements of section 128, we also propose to approve the State's infrastructure SIP submissions for element 110(a)(2)(E)(ii). The State submitted the provisions to meet section 128 separately, but section 128 is not

[6] Id. at 31.

[7] See WAQSR Chapter 6, Section 13.

[8] See WAQSR Chapter 6, Section 2.

NAAQS-specific and once the State has met the requirements of section 128, that is sufficient for purposes of section 110(a)(2)(E)(ii) for all NAAQS. If we finalize this proposed approval for the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS, this will also resolve the prior disapproval for element 110(a)(2)(E)(ii) for the 1997 and 2006 $PM_{2.5}$ NAAQS and terminate the EPA's FIP obligation.

We are proposing to approve the State's May 31, 2016 SIP submission as meeting the requirements of section 128 because we believe that it complies with the statutory requirements and is consistent with the EPA's guidance recommendations concerning section 128. In 1978, the EPA issued a guidance memorandum recommending ways states could meet the requirements of section 128, including suggested interpretations of certain key terms in section 128.[9] In this proposed notice, we discuss additional relevant aspects of section 128. We first note that, in the conference report of the 1977 amendments to the CAA, the conference committee stated, ''[i]t is the responsibility of each state to determine the specific requirements to meet the general requirements of [section 128].'' [10] This legislative history indicates that Congress intended states to have some latitude in adopting SIP provisions with respect to section 128, so long as states meet the statutory requirements of the section. We also note that Congress explicitly provided in section 128 that states could elect to adopt more stringent requirements, as long as the minimum requirements of section 128 are met.

In implementing section 128, the EPA has identified a number of key considerations relevant to evaluation of a SIP submission. The EPA has identified these considerations in the 1978 guidance and in subsequent rulemaking actions on SIP submissions relevant to section 128, whether as SIP revisions for this specific purpose or as an element of broader actions on infrastructure SIP submissions for one or more NAAQS.

Each state must meet the requirements of section 128 through provisions that the EPA approves into the state's SIP and are thus made federally enforceable. Section 128 explicitly mandates that each SIP ''shall contain requirements'' that satisfy subsections 128(a)(1) and 128(a)(2). A mere narrative description of state statutes or rules, or of a state's current or past practice in constituting a board or body and in disclosing potential conflicts of interest, is not a requirement contained in the SIP and does not satisfy the plain text of section 128.

Subsection 128(a)(1) applies only to states that have a board or body that is composed of multiple individuals and that, among its duties, approves permits or enforcement orders under the CAA. It does not apply in states that have no such multi-member board or body that performs these functions, and where instead a single head of an agency or other similar official approves permits or enforcement orders under the CAA. This flows from the text of section 128, for two reasons. First, as subsection 128(a)(1) refers to a majority of members of the board or body in the plural, we think it reasonable to read subsection 128(a)(1) as not creating any requirements for an individual with sole authority for approving permits or enforcement orders under the CAA. Second, subsection 128(a)(2) explicitly applies to the head of an executive agency with ''similar powers'' to a board or body that approves permits or enforcement orders under the CAA, while subsection 128(a)(1) omits any reference to heads of executive agencies. We infer that subsection 128(a)(1) should not apply to heads of executive agencies who approve permits or enforcement orders. States with no multi-member board or body that performs these functions, and instead have a single head of an agency or other similar official who approves CAA permits or enforcement orders, can satisfy the requirements of CAA 128(a)(1) with a negative declaration to that effect.

Subsection 128(a)(2) applies to all states, regardless of whether the state has a multi-member board or body that approves permits or enforcement orders under the CAA. Although the title of section 128 is ''State boards,'' the language of subsection 128(a)(2) explicitly applies where the head of an executive agency, rather than a board or body, approves permits or enforcement orders. In instances where the head of an executive agency delegates his or her power to approve permits or enforcement orders, or where statutory authority to approve permits or enforcement orders is nominally vested in another state official, the requirement to adequately disclose potential conflicts of interest still applies. In other words, the EPA interprets section 128(a)(2) to apply to all states, regardless of whether a state board or body approves permits or enforcement orders under the CAA or whether a head of a state agency (or his/her delegates) performs these duties. Thus, all state SIPs must contain provisions that require adequate disclosure of potential conflicts of interest in order to meet the requirements of subsection 128(a)(2). The question of which entities or parties must be subject to such disclosure requirements must be evaluated by states and the EPA in light of the specific facts and circumstances of each state's regulatory structure.

A state may satisfy the requirements of section 128 by submitting for adoption into the SIP a provision of state law that closely tracks or mirrors the language of the applicable provisions of section 128. A state may take this approach in two ways. First, the state may adopt the language of subsections 128(a)(1) and 128(a)(2) verbatim. Under this approach, the state will be able to meet the continuing requirements of section 128 without any additional, future SIP revisions, even if the state adds or removes authority, either at the state or local level, to individual or to boards or bodies to approve permits or enforcement orders under the CAA so long as the state continues to meet section 128 requirements.

Second, the state may modify the language of subsections 128(a)(1) (if applicable) and 128(a)(2) to name the particular board, body, or individual official with approval authority. In this case, if the state subsequently modifies that authority, the state may have to submit a corresponding SIP revision to meet the continuing requirements of section 128. If the state chooses to not mirror the language of section 128, the state may adopt state statutes and/or regulations that functionally impose the same requirements as those of section 128, including definitions for key terms such as those recommended in the EPA's 1978 guidance. While either of these approaches would meet the minimum requirements of section 128, the statute also explicitly authorizes states to adopt more stringent requirements, for example, to impose additional requirements for recusal of board members from decisions, above and beyond the explicit board composition requirements. Although such recusal alone does not meet the requirements of section 128, states have the authority to require such recusal over and above the explicit requirements of section 128. These approaches give states flexibility in implementing section 128, while still ensuring consistency with the statute.

[9] Memorandum from David O. Bickart, Deputy General Counsel, to Regional Air Directors, Guidance to States for Meeting Conflict of Interest Requirements of Section 128 (Mar. 2, 1978).

[10] H.R. Rep. 95–564 (1977), reprinted in 3 *Legislative History of the Clean Air Act Amendments of 1977*, 526–27 (1978).

As previously explained, the EPA interprets subsection 128(a)(1) to apply only to states that have a board or body with multiple members that, among its duties, approves permits or enforcement orders under the Act. Wyoming's Environmental Quality Act establishes the Environmental Quality Council (EQC or Council), a separate agency of state government. See Wyoming Statutes 35–11–111(a). The members of the Council are appointed by the Governor. Among the duties of the Council are conducting hearings in any case contesting the administration or enforcement of any law, rule, regulation, standard or order issued or administered by DEQ or by any division of DEQ. *Id.* at 35–11–112(a)(iii). In particular, a person subject to a DEQ order may request a hearing before the Council. *Id.* at 35–11–701(c)(ii)–(iv). The Council must also conduct hearings in any case contesting the grant, denial, suspension, revocation or renewal of any permit authorized or required by the Environmental Quality Act. *Id.* at 35–11–112(a)(iv). Under Article 2, Air Quality, and Article 8, Permits, of the Environmental Quality Act, any applicant for an air permit may petition the Council for a hearing to contest DEQ's decision on the permit. See *id.* at 35–11–208; 35–11–802.

Given the duties and authorities of the Council, the Council appears to be a ''board or body which approves permits or enforcement orders'' under the CAA.[11] As the EPA has explained in other rulemaking actions, *e.g.,* 78 FR 32613 (May 31, 2013), we interpret section 128(a)(1) to mean that boards that are the potential final decisionmaker via permit and enforcement order appeals ''approve'' those permits and enforcement orders. For example, by being the final decisionmaker with respect to questions such as whether a source receives a permit and the specific contents of such a permit, the Council is an entity that approves the permit within the meaning of 128(a)(1). Thus, the EQC is subject to the requirements of 128(a)(1). Wyoming's May 31, 2016 submission includes a provision in the Wyoming DEQ Chapter 1, General Rules of Practice and Procedure Section 16(a)(i), Air Quality Division, State Implementation Plan, which provides that the Council ''shall have at least a majority of members who represent the public interest and do not derive a significant portion of their income from persons subject to Air Quality permits or enforcement orders, as required by the Clean Air Act, Section 128(a)(1).'' We propose to approve this submission as satisfying the requirements of subsection 128(a)(1).

The State's May 31, 2016 submittal includes requirements that Council members ''disclose any potential conflicts of interest in a public meeting of the Council as required by the Clean Air Act, Section 128(a)(2).'' Thus, Wyoming's submittal addresses disclosure of potential conflicts of interest from Council members that approve permits and enforcement orders under the Act. We therefore propose to approve this submission as satisfying the requirements of subsection 128(a)(2).

In summary, the EPA proposes to approve Wyoming's May 31, 2016 submittal into the SIP to meet the requirements of section 128 of the Act. We also propose to approve Wyoming's infrastructure SIP with respect to the requirements of Section 110(a)(2)(E)(ii) for 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

7. *Stationary source monitoring system:* Section 110(a)(2)(F) requires: (i) ''The installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources; (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources; and (iii) correlation of such reports by the State agency with any emission limitations or standards established pursuant to [the Act], which reports shall be available at reasonable times for public inspection.''

Wyoming's SIP approved monitoring provision cited by Wyoming in its certifications (WAQSR Chapter 6, Section 2, Permit requirements for construction, modification, and operation), pertains to its program of periodic emissions testing and plant inspections of stationary sources, and related testing requirements and protocols (including periodic reporting) to assure compliance with emissions limits. Additionally, WAQSR Chapter 7, Section 2 (Continuous monitoring requirements for existing sources), requires certain sources to install and maintain continuous emission monitors to assure compliance with emission limitations.

Furthermore, Wyoming is required to submit emissions data to the EPA for purposes of the National Emissions Inventory (NEI). The NEI is the EPA's central repository for air emissions data. The EPA published the Air Emissions Reporting Rule (AERR) on December 5, 2008, which modified the requirements for collecting and reporting air emissions data (73 FR 76539). The AERR shortened the time states had to report emissions data from 17 to 12 months, giving states one calendar-year to submit emissions data. All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through the EPA's online Emissions Inventory System. States report emissions data for the six criteria pollutants and their associated precursors—nitrogen oxides, sulfur dioxide, ammonia, lead, carbon monoxide, particulate matter and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. Wyoming made its latest update to the NEI in May 2016. The EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the Web site *https://www.epa.gov/air-emissions-inventories.*

Based on the analysis above, we propose to approve the Wyoming SIP as meeting the requirements of CAA section 110(a)(2)(F) for the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

8. *Emergency powers:* Section 110(a)(2)(G) of the CAA requires infrastructure SIPs to ''provide for authority comparable to that in [CAA section 303] and adequate contingency plans to implement such authority[.]''

Under CAA section 303, the EPA Administrator has authority to bring suit to immediately restrain an air pollution source that presents an ''imminent and substantial endangerment to public health or welfare, or the environment.''[12] If such action may not practicably assure prompt protection, then the Administrator has authority to issue temporary administrative orders to protect the public health or welfare, or the environment, and such orders can be extended if the EPA subsequently files a civil suit. We propose to find that Wyoming's infrastructure SIP submittals provide for authority for the State comparable to that granted to the EPA Administrator to act in the face of an imminent and substantial endangerment to the public's health or welfare, or the environment.

[11] See, *e.g.,* 78 FR 32613 (May 31, 2013), for a discussion of the phrase ''board or body which approves permits or enforcement orders.''

[12] A discussion of the requirements for meeting CAA section 303 is provided in our notice of proposed rulemaking: Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 1997 and 2006 $PM_{2.5}$, 2008 Lead, 2008 Ozone, and 2010 NO_2 National Ambient Air Quality Standards; South Dakota (79 FR 71040, Dec. 1, 2014) under ''VI. Analysis of State Submittals, 8. Emergency powers.''

Wyoming's SIP certifications with regard to the section 110(a)(2)(G) emergency order requirements cite EPA approved provisions (WAQSR Chapter 12, Section 2, Air pollution emergency episodes) which establish a basis for the Division to issue notices to the public relating to levels of air pollution from ''alerts,'' ''warnings,'' and ''emergencies'' to prevent ''a substantial threat to the health of persons'' if ''such [pollution] levels are sustained or exceeded'' in places that are attaining or have attained such pollution levels. WAQSR Chapter 12, Section 2(a) allows for the broad application of this provision to ''air pollutants'' beyond PM_{10} and SO_2. Sections 35–11–115(a) and (b) of the WEQA also provides the Director power to issue emergency orders ''to reduce or discontinue immediately the actions causing the condition of pollution'' and institute ''a civil action for immediate injunctive relief to halt any activity'' presenting an ''immediate and substantial danger to human or animal health or safety.''

Furthermore, as stated in Wyoming's 2012 $PM_{2.5}$ certification, WEQA Section 35–11–901(a) authorizes the DEQ to seek a penalty or injunction from a court of competent jurisdiction for ''[a]ny person who violates, or any director, officer or agent of a corporate permittee who willfully and knowingly authorizes, orders or carries out the violation of any provision of this act, or any rule, regulation, standard or permit adopted hereunder or who violates any determination or order of the council pursuant to this act or any rule, regulation, standard permit, license or variance. . .''

While no single Wyoming statute mirrors the authorities of CAA section 303, we propose to find that the combination of WEQA and WAQSR provisions previously discussed provide for authority comparable to section 303. Section 303 authorizes the Administrator to immediately bring suit to restrain and issue emergency orders when necessary, and to take prompt administrative action against any person causing or contributing to air pollution that presents an imminent and substantial endangerment to public health or welfare, or the environment. Therefore, we propose that Wyoming's SIP submittals sufficiently meet the requirements of CAA 110(a)(2)(G) because they demonstrate that Wyoming has authority comparable to CAA section 303.

States must also have adequate contingency plans adopted into their SIP to implement the air agency's emergency episode authority (as previously discussed). This can be done by submitting a plan that meets the applicable requirements of 40 CFR part 51, subpart H for the relevant NAAQS if the NAAQS is covered by those regulations. The EPA approved Wyoming's Emergency Episode Plan on February 9, 1982 at 47 FR 5892. We find that Wyoming's Emergency Episode Plan and air pollution emergency rules (WAQSR Chapter 12, Section 2, Air pollution emergency episodes) include PM_{10} [13] and SO_2 [14]; establish stages of episode criteria; provide for public announcement whenever any episode stage has been determined to exist; and specify emission control actions to be taken at each episode stage, consistent with the EPA emergency episode SIP requirements set forth at 40 CFR part 51 subpart H (prevention of air pollution emergency episode) for particulate matter, ozone, NO_2, and SO_2.

As noted in the 2011 Memo ''based on [the] EPA's experience to date with the Pb NAAQS and designating Pb nonattainment areas, [the] EPA expects that an emergency episode associated with Pb emissions would be unlikely and, if it were to occur, would be the result of a malfunction or other emergency situation at a relatively large source of Pb'' (page 14).[15] Accordingly, the EPA believes the central components of a contingency plan would be to reduce emissions from the source at issue and communicate with the public as needed. We note that 40 CFR part 51, subpart H (51.150–51.152) and 40 CFR part 51, appendix L do not apply to Pb.

Based on the above analysis, we propose approval of Wyoming's SIP as meeting the requirements of CAA section 110(a)(2)(G) for the 2008 Pb, 2008 ozone, and 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

9. *Future SIP revisions:* Section 110(a)(2)(H) requires that SIPs provide for revision of such plan: (i) ''[f]rom time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard[;] and (ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the [SIP] is substantially inadequate to attain the [NAAQS] which it implements or to otherwise comply with any additional requirements under this [Act].''

The general provisions in Article 1 of the WEQA (Article 1, Chapter 11, Title 35 of the Wyoming Statutes) and the particular provision in Article 2, section 35–11–202 of the Wyoming Statutes, gives the Director sufficient authority to meet the requirements of CAA section 110(a)(2)(H). Therefore, we propose to approve Wyoming's SIP as meeting the requirements of CAA section 110(a)(2)(H).

10. *Consultation with government officials, public notification, PSD and visibility protection:* Section 110(a)(2)(J) requires that each SIP ''meet the applicable requirements of section 121 of this title (relating to consultation), section 127 of this title (relating to public notification), and part C of this subchapter (relating to PSD of air quality and visibility protection).''

In its certifications, the State cites one non-regulatory document relative to consultation with government officials (*e.g.*, Consultation, approved by EPA July 2, 1979 (44 FR 38473)) to meet the requirements of CAA section 121. The State has demonstrated that it has the authority and rules in place to provide a process of consultation with general purpose local governments, designated organizations of elected officials of local governments and any Federal Land Manager having authority over federal land to which the SIP applies, consistent with the requirements of CAA section 121 (*see* Wyoming's non-regulatory document, Intergovernmental Cooperation). Furthermore, the non-regulatory document, Public Notification of Air Quality, approved by EPA July 2, 1979 (44 FR 38473), cited by Wyoming, meets the general requirements of CAA section 127 to

[13] The EPA has not yet promulgated regulations for ambient levels pertaining to priority levels for $PM_{2.5}$ under the 2012 NAAQS (2013 Memo, p. 47). The EPA's September 25, 2009 Memo (available within the docket) suggested that states with areas that have had a $PM_{2.5}$ exceedance greater than 140.4 mg/m_3 should develop and submit an emergency episode plan. If no such concentration was recorded in the last three years, the guidance suggested that the State can rely on its general emergency authorities. In this rulemaking, we continue to view these suggestions as appropriate in assessing Wyoming's SIP for this element. Wyoming has not had such a recorded $PM_{2.5}$ level and thus an emergency episode plan for $PM_{2.5}$ is not necessary. The SIP therefore meets the requirements of CAA section 110(a)(2)(G) for the 2012 $PM_{2.5}$ NAAQS.

[14] As stated in Wyoming's 2012 $PM_{2.5}$ infrastructure SIP certification, ''WAQSR Chapter 12, Emergency Controls, establishes a basis for the Division to issue air pollution alerts, warnings, or emergencies in order to prevent the occurrence of an air pollution emergency stemming from the effects of air pollutants on the health of persons. While guidance for the issuance of alerts, warnings, or emergencies is established specifically for PM_{10} and SO_2, the chapter does not limit its purview to these two pollutants—and could encompass other pollutants such as $PM_{2.5}$.'' Furthermore, Wyoming is not required to have a specific contingency plan for particulate matter, ozone, NO_2, or SO_2 (*see* 40 CFR 52.2621).

[15] October 14, 2011, ''Guidance on Infrastructure SIP Elements Required Under Sections 110(a)(1) and (2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS).''

notify the public when the NAAQS have been exceeded.

Wyoming's SIP regulations for its PSD program were first federally-approved and made part of the SIP on September 6, 1979 (44 FR 51977). The EPA has further evaluated the State's SIP-approved PSD program in section VI.3 which discusses element 110(a)(2)(C) of this proposed action. As explained in that section, we propose to approve Wyoming's infrastructure SIPs for the 2008 Pb, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS with respect to the requirement in element (C) to have a permit program as required by Part C of the Act. We similarly propose to approve the infrastructure SIPs for the 2008 Pb, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS with respect to the requirement in element (J) that the SIP meet the applicable requirements of Part C with respect to PSD.

Finally, with regard to the applicable requirements for visibility protection, the EPA recognizes states are subject to visibility and regional haze program requirements under part C of the Act. In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, we find that there are no applicable visibility requirements under section 110(a)(2)(J) when a new NAAQS becomes effective.

Based on the above analysis, we propose to approve the Wyoming SIP as meeting the requirements of CAA section 110(a)(2)(J) for the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

11. *Air quality and modeling/data:* Section 110(a)(2)(K) requires each SIP to provide for: (i) ''the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a [NAAQS]; and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.''

Wyoming's PSD program requires that estimates of ambient air concentrations be based on applicable air quality models specified in appendix W of 40 CFR part 51, and that modification or substitution of a model specified in appendix W must be approved by the Administrator (see WAQSR Chapter 6, Section 2(b)(iv)). Additionally, WAQSR Chapter 6, Section 2(f)(iv) authorizes the AQD Administrator to impose any reasonable conditions upon an approval to construct, modify or operate, including modeling ''. . . to determine the effect which emissions from a source may have, or is having, on air quality in any area which may be affected by emissions from such source.'' Furthermore, the WEQA 35–11–1101(b) and Wyoming's PPA provide Wyoming with the authority to submit air quality modeling date to the Administrator.[16] As a result, the SIP provides for such air quality modeling as the Administrator has prescribed.

Therefore, we propose to approve the Wyoming SIP as meeting CAA section 110(a)(2)(K) for the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

12. *Permitting fees:* Section 110(a)(2)(L) requires ''the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this [Act], a fee sufficient to cover[:] (i) the reasonable costs of reviewing and acting upon any application for such a permit[;] and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under [title] V.''

WAQSR Chapter 6, Section 2, paragraph (o) and WEQA sections 35–11–211(a), Fees, require applicants of construction permits to pay the costs for DEQ to review and act on the permit applications. We also note that fees collected under Wyoming's approved title V permit program (64 FR 8523, Feb, 22, 1990) are sufficient to implement and enforce the program (*see* 59 FR 48802, Sept. 23, 1994). Therefore we propose to approve the submissions as submitted by the State for the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

13. *Consultation/participation by affected local entities:* Section 110(a)(2)(M) requires states to ''provide for consultation and participation [in SIP development] by local political subdivisions affected by [the SIP].''

The non-regulatory document, Intergovernmental Cooperation, cited in Wyoming's submittals meets the requirements of CAA section 110(a)(2)(M). We propose to approve Wyoming's SIP as meeting these requirements for the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

VII. What action is the EPA taking?

In this action, the EPA is proposing to approve infrastructure elements for the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS from the State's certifications as shown in Table 1. Elements we propose no action on are reflected in Table 2. Finally, the EPA is proposing to approve a new Wyoming DEQ General Rules of Practice and Procedures submitted on May 31, 2016 to satisfy requirements of element (E)(ii),which refers to requirements related to state boards.

A comprehensive summary of infrastructure elements, and additions to the Wyoming DEQ Rules of Practice and Procedures organized by the EPA's proposed rule action are provided in Table 1 and Table 2.

TABLE 1—LIST OF WYOMING INFRASTRUCTURE ELEMENTS AND REVISIONS THAT THE EPA IS PROPOSING TO APPROVE

Proposed for approval
October 12, 2011 submittal—2008 Pb NAAQS: (A), (B), (C), (D)(i)(II) prong 3, (D)(ii), (E), (F), (G), (H), (J), (K), (L) and (M).
March 6, 2015 submittal—2010 SO_2 NAAQS: (A), (B), (C), (D)(i)(II) prong 3, (D)(ii), (E), (F), (G), (H), (J), (K), (L) and (M).
February 6, 2014 submittal—2008 Ozone NAAQS: (A), (B), (D)(ii), (E), (F), (G), (H), (J), (K), (L) and (M).
January 24, 2014 submittal—2010 NO_2 NAAQS: (A), (B), (C), (D)(i)(II) prong 3, (D)(ii), (E), (F), (G), (H), (J), (K), (L) and (M).
June 24, 2016 submittal—2012 $PM_{2.5}$ NAAQS: (A), (B), (C), (D)(i)(II) prong 3, (D)(ii), (E), (F), (G), (H), (J), (K), (L) and (M).
May 31, 2016 submittal—New Rules to Wyoming DEQ General Rules of Practice and Procedure, CAA Section 128: Chapter 1, General Provisions, Section 16, Air Program State Implementation Plan.

[16] *See* Email from Michael Morris ''Question Regarding iSIP Element K- Submission of Air Quality Modeling Data'' September 15, 2016, available within docket.

TABLE 2—LIST OF WYOMING INFRASTRUCTURE ELEMENTS AND REVISIONS THAT THE EPA IS PROPOSING TO TAKE NO ACTION ON

Proposed for no action (revision to be made in separate rulemaking action.)
January 19, 2012 submittal—2008 Pb NAAQS: (D)(i)(I) prongs 1 and 2, (D)(i)(II) prong 4.
February 6, 2014 submittal—2008 Ozone NAAQS: (D)(i) prongs 1–4 and (C) (proposed action on (D)(i)(II) prong 3 and (C) at 81 FR 53365, Aug. 12, 2016).
January 31, 2013 submittal—2010 NO_2 NAAQS: (D)(i)(I) prongs 1 and 2, (D)(i)(II) prong 4.
June 2, 2013 submittal—2010 SO_2 NAAQS: (D)(i)(I) prongs 1 and 2, (D)(i)(II) prong 4.
December 22, 2015 submittal—2012 $PM_{2.5}$ NAAQS: (D)(i)(I) prongs 1 and 2, (D)(i)(II) prong 4.

VIII. Incorporation by Reference

In this rulemaking, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the Wyoming Department of Environmental Quality General Rules of Practice and Procedure, Chapter 1, General Provisions, Section 16, Air Program State Implementation Plan Chapter 1, General Provisions, Section 16, Air Program State Implementation Plan pertaining to state board requirements VI.6. b. *Sub-element (ii): State boards,* of this preamble. The EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and/or at the EPA Region 8 office (please contact the person identified in the ''For Further Information Contact'' section of this preamble for more information).

IX. Statutory and Executive Orders Review

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations (42 U.S.C. 7410(k), 40 CFR 52.02(a)). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves some state law as meeting federal requirements and disapproves other state law because it does not meet federal requirements; this proposed action 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, Oct. 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, Aug. 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, Feb. 16, 1994).

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

List of Subjects in 40 CFR Part 52

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

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

Dated: October 20, 2016.

Shaun L. McGrath,

Regional Administrator, Region 8.

[FR Doc. 2016–26860 Filed 11–7–16; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 10 and 11

[PS Docket No. 15–91; PS Docket No. 15–94; FCC 16–127]

Wireless Emergency Alerts; Amendments to the Commission's Rules Regarding the Emergency Alert System

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes revisions to Wireless Emergency Alert (WEA) rules to improve WEA, leveraging advancements in technology to improve WEA's multimedia, multilingual and geo-targeting capabilities, as well as lessons learned from alert originators' experience since WEA was initially deployed. This document also proposes steps to improve the availability of information about WEA, both to empower consumers to make informed choices about the emergency information that they will receive, as well as to promote transparency for emergency management agencies and other WEA stakeholders. By this action, the Commission affords interested parties an opportunity to participate more fully in WEA, and to enhance the utility of WEA as an alerting tool.

DATES: Comments are due on or before December 8, 2016 and reply comments are due on or before January 9, 2017.

ADDRESSES: You may submit comments, identified by PS Docket No. 15–91, P.S. Docket No. 15–94, FCC 16–127, by any of the following methods:

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

• *Federal Communications Commission's Web site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.

• *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: James Wiley, Attorney Advisor, Public Safety and Homeland Security Bureau, at (202) 418–1678, or by email at *James.Wiley@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking in PS Docket No. 15–91, No. 15–94, FCC 16–127, released on September 29, 2016. The document is available for download at *http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0929/FCC-16-127A1.pdf.* The complete text of this document is also available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *FCC504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Initial Paperwork Reduction Act of 1995 Analysis

This Further Notice of Proposed Rulemaking seeks comment on potential new or revised proposed information collection requirements. If the Commission adopts any new or revised final information collection requirements when the final rules are adopted, the Commission will publish a notice in the **Federal Register** inviting further comments from the public on the final information collection requirements, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501–3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), we have prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *Further Notice of Proposed Rulemaking* (*FNPRM*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *FNPRM.* We will send a copy of the *FNPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *FNPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Final Rules

2. With this *FNPRM,* we take another step towards strengthening Wireless Emergency Alerts (WEA) by proposing revisions to our rules to empower alert originators to participate more fully in WEA, to empower consumers to make more informed decisions about the kind of WEA service that their CMS Provider offers, and to enhance the utility of WEA as an alerting tool. Our proposals fall into four categories, ensuring the provision of effective WEA Alert Messages, incorporating future technical advancements to improve WEA, developing consumer education tools, and improving WEA transparency.

3. Specifically, with respect to ensuring the provision of effective WEA Alert Messages, we propose to establish clear definitions and requirements for CMS Providers participating in WEA in whole and in part. We ensure the provision of effective WEA Alert Messages by removing language from our rules that may contribute to emergency management agencies' uncertainty about WEA's quality of service. We require Participating CMS Providers to offer subscribers a method of accessing pending Alert Messages. We propose to require that earthquake-related alerts be delivered to the public in fewer than three seconds. We also seek comment on how to leverage the improvements to WEA that we adopt today to continue to improve WEA's value during disaster relief efforts. With respect to incorporating future technical advancements into WEA, we seek comment on and propose of a number of technological innovations that could expand WEA's multimedia, multilingual and geo-targeting capabilities, including innovations on 5G networks. With respect to developing consumer education tools, we propose to promote more informed consumer choice through improvements to the point-of-sale notifications for Participating CMS Providers' mobile devices, and to the WEA interface. Finally, we propose to improve WEA transparency through requiring Participating CMS Providers to disclose their performance along three key metrics, latency, geo-targeting, and reliability, and we seek comment on whether additional alert logging could be instrumental in allowing them to collect relevant data.

4. This *FNPRM* represents another step towards achieving one of our highest priorities—''to ensure that all Americans have the capability to receive timely and accurate alerts, warnings and critical information regarding disasters and other emergencies.'' This *FNPRM* also is consistent with our obligation under Executive Order 13407 to ''adopt rules to ensure that communications systems have the capacity to transmit alerts and warnings to the public as part of the public alert and warning system,'' and our mandate under the Communications Act to promote the safety of life and property through the use of wire and radio communication. We take these steps as part of an overarching strategy to advance the Nation's alerting capability, which includes both WEA and the Emergency Alert System (EAS), to keep pace with evolving technologies and to empower communities to initiate life-saving alerts.

B. Legal Basis

5. The proposed action in this *WEA Further Notice of Proposed Rulemaking* is authorized on the basis of 47 U.S.C. 151, 152, 154(i) and (o), 301, 301(r), 303(v), 307, 309, 335, 403, 544(g), 606 and 615 of the Communications Act of 1934, as amended, as well as by sections 602(a), (b), (c), (f), 603, 604 and 606 of the WARN Act.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

6. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term

''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. A small-business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

7. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* Our action may, over time, affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive, statutory small entity size standards. First, nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA. In addition, a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2007, there were approximately 1,621,315 small organizations. Finally, the term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2011 indicate that there were 89,476 local governmental jurisdictions in the United States. We estimate that, of this total, as many as 88, 506 entities may qualify as ''small governmental jurisdictions.'' Thus, we estimate that most governmental jurisdictions are small.

8. *Wireless Telecommunications Carriers (except satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services. The appropriate size standard under SBA rules for the category Wireless Telecommunications Carriers (except satellite) is that a business is small if it has 1,500 or fewer employees. Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of fewer than 1,000 employees. Thus under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small.

9. *Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission initially defined a ''small business'' for C- and F-Block licenses as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For F-Block licenses, an additional small business size standard for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA. No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that claimed small business status in the first two C-Block auctions. A total of 93 bidders that claimed small business status won approximately 40 percent of the 1,479 licenses in the first auction for the D, E, and F Blocks. On April 15, 1999, the Commission completed the reauction of 347 C-, D-, E-, and F-Block licenses in Auction No. 22. Of the 57 winning bidders in that auction, 48 claimed small business status and won 277 licenses.

10. On January 26, 2001, the Commission completed the auction of 422 C and F Block Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in that auction, 29 claimed small business status. Subsequent events concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. On February 15, 2005, the Commission completed an auction of 242 C-, D-, E-, and F-Block licenses in Auction No. 58. Of the 24 winning bidders in that auction, 16 claimed small business status and won 156 licenses. On May 21, 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction No. 71. Of the 12 winning bidders in that auction, five claimed small business status and won 18 licenses. On August 20, 2008, the Commission completed the auction of 20 C-, D-, E-, and F-Block Broadband PCS licenses in Auction No. 78. Of the eight winning bidders for Broadband PCS licenses in that auction, six claimed small business status and won 14 licenses.

11. *Narrowband Personal Communications Service.* To date, two auctions of narrowband personal communications services (PCS) licenses have been conducted. For purposes of the two auctions that have already been held, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order. A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards.

12. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions.

13. *700 MHz Guard Band Licensees.* In 2000, in the 700 MHz Guard Band Order, the Commission adopted size standards for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. SBA approval of these definitions is not required. An auction of 52 Major Economic Area licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the

licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

14. *Lower 700 MHz Band Licenses.* The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Additionally, the lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area (MSA/RSA) licenses—''entrepreneur''—which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA approved these small size standards. An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were won by 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses. A second auction commenced on May 28, 2003, closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses. Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses. On July 26, 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz band (Auction No. 60). There were three winning bidders for five licenses. All three winning bidders claimed small business status.

15. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order.* An auction of 700 MHz licenses commenced January 24, 2008 and closed on March 18, 2008, which included, 176 Economic Area licenses in the A Block, 734 Cellular Market Area licenses in the B Block, and 176 EA licenses in the E Block. Twenty winning bidders, claiming small business status (those with attributable average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years) won 49 licenses. Thirty three winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years) won 325 licenses.

16. *Upper 700 MHz Band Licenses.* In the *700 MHz Second Report and Order,* the Commission revised its rules regarding Upper 700 MHz licenses. On January 24, 2008, the Commission commenced Auction 73 in which several licenses in the Upper 700 MHz band were available for licensing: 12 Regional Economic Area Grouping licenses in the C Block, and one nationwide license in the D Block. The auction concluded on March 18, 2008, with 3 winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years) and winning five licenses.

17. *Advanced Wireless Services. AWS Services (1710–1755 MHz and 2110–2155 MHz bands (AWS–1); 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands (AWS–2); 2155–2175 MHz band (AWS–3)).* For the AWS–1 bands, the Commission has defined a ''small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, and a ''very small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $15 million. For AWS–2 and AWS–3, although we do not know for certain which entities are likely to apply for these frequencies, we note that the AWS–1 bands are comparable to those used for cellular service and personal communications service. The Commission has not yet adopted size standards for the AWS–2 or AWS–3 bands but proposes to treat both AWS–2 and AWS–3 similarly to broadband PCS service and AWS–1 service due to the comparable capital requirements and other factors, such as issues involved in relocating incumbents and developing markets, technologies, and services.

18. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and ''wireless cable,'' transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)). In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules.

19. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas. The Commission offered three levels of bidding credits: (i) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid. Auction 86 concluded in 2009 with the sale of 61 licenses. Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

20. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,436 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, we

estimate that at least 2,336 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use the most current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: All such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2007, there were a total of 996 firms in this category that operated for the entire year. Of this total, 948 firms had annual receipts of under $10 million, and 48 firms had receipts of $10 million or more but less than $25 million. Thus, the majority of these firms can be considered small. In the Paging *Third Report and Order,* we developed a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these small business size standards. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. Also, according to Commission data, 365 carriers reported that they were engaged in the provision of paging and messaging services. Of those, we estimate that 360 are small, under the SBA-approved small business size standard.

21. *Wireless Communications Service.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction. A ''small business'' is an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' is an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these small business size standards. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as ''very small business'' entities, and one that qualified as a ''small business'' entity.

22. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment. The Small Business Administration has established a size standard for this industry of 750 employees or less. Census data for 2012 show that 841 establishments operated in this industry in that year. Of that number, 819 establishments operated with less than 500 employees. Based on this data, we conclude that a majority of manufacturers in this industry is small.

23. *Software Publishers.* Since 2007 these services have been defined within the broad economic census category of Custom Computer Programming Services; that category is defined as establishments primarily engaged in writing, modifying, testing, and supporting software to meet the needs of a particular customer. The SBA has developed a small business size standard for this category, which is annual gross receipts of $25 million or less. According to data from the 2007 U.S. Census, there were 41,571 establishments engaged in this business in 2007. Of these, 40,149 had annual gross receipts of less than $10,000,000. Another 1,422 establishments had gross receipts of $10,000,000 or more. Based on this data, the Commission concludes that the majority of the businesses engaged in this industry are small.

24. *NCE and Public Broadcast Stations.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.'' The SBA has created a small business size standard for Television Broadcasting entities, which is: Such firms having $13 million or less in annual receipts. According to Commission staff review of the BIA Publications, Inc., Master Access Television Analyzer Database as of May 16, 2003, about 814 of the 1,220 commercial television stations in the United States had revenues of $12 (twelve) million or less. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

25. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent. There are also 2,117 low power television stations (LPTV). Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

26. The Commission has, under SBA regulations, estimated the number of licensed NCE television stations to be 380. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from

affiliated companies. The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

27. This *FNPRM* proposes new or modified reporting or recordkeeping requirements. We seek comment on whether the reporting, recordkeeping, and other compliance requirements we adopt today should affect all entities in the same manner, or whether we should make special accommodations for non-nationwide entities.

28. We propose to require Participating CMS Providers, to gather, analyze and report on system performance metrics such as the geo-targeting, latency, and availability and reliability. We propose to require Participating CMS Providers to offer potential subscribers notice at the point of sale that more accurately reflects the extent to which they will offer WEA. We seek comment on whether Participating CMS Providers should be required to update their election to participate in WEA. We seek comment on the costs of compliance.

E. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

29. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

30. As noted in paragraph 1 above, this *FNPRM* initiates a rulemaking to update the rules governing the WEA system by which Participating CMS Providers may elect to transmit emergency alerts to the public, a goal mandated by the WARN Act and consistent with the Commission's obligation to protect the lives and property of the public. Primarily, this *FNPRM* seeks comment on four general categories of proposed rule changes: Ensuring the provision of effective WEA Alert Messages, incorporating future technical advancements to improve WEA, developing consumer education tools, and improving WEA transparency.

31. With respect to ensuring the provision of effective WEA Alert Messages, we seek comment on whether there are any particular considerations that we should take into account when defining the nature of a Participating CMS Provider's participation in WEA due to the electing entity's size. We also seek comment on whether non-nationwide Participating CMS Providers require the regulatory flexibility implicated by certain provisions of Sections 10.330 and 10.500, and if so, whether we should retain the flexibility that the current language of those rules may provide only as applicable to them. With respect to incorporating technical advancements to improve WEA, we seek comment on whether support for additional languages would be unduly burdensome for non-nationwide Participating CMS Providers, and if so, whether there are steps that we can take to accommodate these entities to make compliance more feasible. We also seek comment on whether alternative geo-targeting standards would be appropriate for non-nationwide Participating CMS Providers. With respect to developing consumer education tools, we seek comment on whether we should give special consideration to non-nationwide entities if we were to require Participating CMS Providers to offer a consistent menu of opt-out choices, and on whether non-nationwide Participating CMS Providers should be required to make more lenient disclosures at the point of sale. Finally, with respect to improving WEA transparency, we propose the use of performance, rather than design standards to collect information relevant to our analysis of WEA's system integrity. We also seek comment on whether it would be appropriate to adopt an alternative, less frequent reporting requirement for non-nationwide Participating CMS Providers, and on whether such Participating CMS Providers should also be allowed to collect less granular data on system performance in order to reduce any cost burdens entailed by these proposed recordkeeping and reporting requirements.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

32. None.

II. Further Notice of Proposed Rulemaking

A. Ensuring the Provision of Effective WEA Alert Messages

1. Defining the Modes of Participation in WEA

a. Discussion

33. We propose to adopt definitions for participation in WEA ''in whole'' and ''in part'' based on the attestations that CMS Providers are required to offer in their election letters, and on the notifications that CMS Providers offer potential subscribers at the point of sale. Specifically, we propose to define CMS Providers participating in WEA ''in whole'' as CMS Providers that have agreed to transmit WEA Alert Messages in a manner consistent with the technical standards, protocols, procedures, and other technical requirements implemented by the Commission in the entirety of their geographic service area and to all mobile devices on their network. Similarly, we propose to define CMS Providers participating in WEA ''in part'' as CMS Providers that have agreed to transmit WEA Alert Messages in a manner consistent with the technical standards, protocols, procedures, and other technical requirements implemented by the Commission in some, if not all of their geographic service area, and to some, if not all of the mobile devices on their network. We seek comment on these proposed definitions for CMS Provider participation in WEA. What are the technical prerequisites to offering WEA in a geographic area where a commercial mobile service is available? What factors lead Participating CMS Providers to offer WEA in a geographic area smaller than the area in which they offer commercial mobile service, or to fewer than all mobile devices on their network?

34. We also seek comment on our proposal to incorporate the extent to which CMS Providers offer WEA on mobile devices on their networks into our definitions of participation in whole and in part. Bluegrass Cellular states that ''participation in whole has no bearing on the number or percentage of devices on the network that are WEA capable.'' If this were the case, however, could a CMS Provider that offers WEA on only one mobile device qualify as participating in whole? Would this be consistent with a common-sense interpretation of ''in whole'' participation, or with our requirement that only CMS Providers participating in part must disclose at the point of sale

that WEA may not be available on all devices on this provider's network?

35. If participation in WEA in whole entails offering WEA on all mobile devices on the network, we seek comment on how ''mobile devices'' should be defined. For purposes of WEA, Section 10.10(j) defines ''mobile devices'' as ''[t]he subscriber equipment generally offered by CMS providers that supports the distribution of WEA Alert Messages.'' This definition would encompass any mobile device connected to a Participating CMS Providers' network that is capable of receiving WEA Alert Messages, including but not limited to LTE-enabled and future generation tablet computers, and phablets. The record shows, however, that there is significant variation among Participating CMS Providers with respect to mobile devices on their networks that support WEA capability. For example, the Department of Homeland Security's *WEA Mobile Penetration Strategy Report* shows that WEA is already available on some tablets, including iPads running iOS 6 or greater, and emergency managers agree that WEA should be made available to the public ''by all available means,'' including on tablets. On the other hand, CTIA suggests that while 4G–LTE tablets can be WEA capable, Wi-Fi-only tablets cannot, and states that ''even if there are LTE-enabled tablets with the capability to receive cell broadcast messages through the network infrastructure, additional mobile device behavior standards and device development are required to support the handling and presentation of WEA messages.'' AT&T simply concludes that they ''do not believe customers could view WEA messages on their existing tablets.'' We seek comment on the technical characteristics needed in a device to allow it to receive WEA Alert Messages. Would it be advisable for us to revise our definition of the term ''mobile device'' in our Part 10 rules to reflect the technical prerequisites to supporting WEA service? Finally, we seek comment on whether there are any barriers that may prevent the delivery of WEA to the full range of consumer devices for which Participating CMS Providers may wish to provide emergency alerts, and which could fall within the scope of the WARN Act.

36. In addition to defining participation in WEA in whole and in part with reference to the extent to which Participating CMS Providers offer WEA in the entirety of their geographic service area and to all mobile devices operating on their networks, we seek comment on whether these definitions should include the extent to which Participating CMS Providers make WEA available using all available network technologies. To what extent should Participating CMS Providers' attestation that they will ''support the development and deployment of technology for the 'C' interface, the CMS Provider Gateway, the CMS Provider infrastructure, and mobile devices with WEA functionality'' be read as a commitment to support WEA using all available network technologies? To what extent do Participating CMS Providers currently use available technologies, such as Wi-Fi and small cells, in support of their WEA deployments? To the extent that Participating CMS Providers do not leverage all available technologies to further their participation in WEA, we seek comment on any factors that have contributed to this decision. We seek comment on any additional technologies already commercially deployed in CMS networks that could be leveraged in support of WEA, and on any additional functionalities that they may enable.

37. We seek comment on whether, in the event we adopt new definitions for participation in WEA, it would be appropriate to require CMS Providers to refresh and renew their election to participate in WEA. Further, notwithstanding whether we ultimately adopt new definitions for WEA participation, have the nature of CMS networks (having evolved from 2 and 3G to 4G technologies) and the requirements of Part 10 changed sufficiently since WEA's deployment to merit a renewed election? How frequently, if at all, should Participating CMS Providers be required to update their election in order to provide the Commission and the public with an up-to-date account of their WEA service offerings? Alternatively, should the occurrence of a certain event or events trigger a Participating CMS Provider's obligation to renew their election? If so, what specific event or events should give rise to a requirement for a Participating CMS Provider to renew their election? We seek comment on steps that we can take to mitigate any burden that disclosure of this information may present for Participating CMS Providers, and especially non-nationwide Participating CMS (*e.g.,* small, regional, and rural providers). To what extent would any information that Participating CMS Providers may be required to disclose be considered sensitive? As WEA has evolved into a vital and relied-upon component of the Nation's public safety infrastructure, has this information become necessary to understanding the Nation's readiness in times of disaster?

38. We anticipate that adopting these definitions for the modes of Participation in WEA would improve long-term participation in WEA while incenting achievement of evolving WEA objectives, consistent with Participating CMS Providers technology refresh cycle. We seek comment on this analysis. What steps can we take to encourage Participating CMS Providers to increase their engagement with WEA voluntarily? Further, we seek comment on whether clearly delineated modes of participation in WEA, taken together with a renewed election requirement, would facilitate emergency management agencies' response planning efforts by evincing the extent to which WEA is available in local communities. To what extent could information about each Participating CMS Provider's WEA service offerings by geographic area, device, and technology facilitate community reliance on WEA as an emergency management tool? What steps can we take to make this information as useful as possible to emergency management agencies while limiting burdens on Participating CMS Providers? Are there alternative approaches that we could consider in order to accomplish our objective of incenting increased engagement with WEA by Participating CMS Providers and emergency management agencies?

2. Infrastructure Functionality

39. We propose to amend Sections 10.330 and 10.500 to delete parallel statements that ''WEA mobile device functionality is dependent on the capabilities of a Participating CMS Provider's delivery technologies'' and that ''[i]nfrastructure functions are dependent upon the capabilities of the delivery technologies implemented by a Participating CMS Provider.'' Since the time these provisions were adopted, Participating CMS Providers have overwhelmingly elected to utilize cell broadcast technology in fulfillment of their WEA election. Participating CMS Providers' infrastructure has proven to be universally capable of the basic functionalities described by Section 10.330 and 10.500. Accordingly, we believe these provisions are no longer necessary. Moreover, removing these provisions from our Part 10 rules would likely clarify for emergency management agencies considering whether to become authorized as WEA alert initiators that the alerting service WEA offers is capable of providing these critical functions, especially when taken together with the performance reporting and alert logging requirements

discussed below. We seek comment on this analysis.

40. We seek comment on whether Providers CMS Providers, and particularly non-nationwide CMS Providers (small, rural or regional Participating CMS Providers), continue to require the flexibility that this language may provide. There is no record about why these caveats remain necessary given changes in technology over the four years since WEA's deployment. Does the flexibility that this language may provide enable CMS Providers to participate in WEA that otherwise would be unable to do so? We invite comment from any Participating CMS Provider that would no longer be able to participate in WEA in whole or in part were we to remove this language from Sections 10.330 and 10.500. Such commenters should specify the manner in which their WEA service would be unable to comply with the requirements of Sections 10.330 and 10.500 were we to remove the prefatory language from those Sections, while still being capable of providing the WEA service described elsewhere in Part 10. Similarly, would removing this language make any WEA-capable mobile devices incapable of continuing to support WEA? If so, why? We seek comment on whether, if we retain this language at all, it should be modified to apply only to non-nationwide Participating CMS Providers.

3. Alert Message Preservation

41. We propose to amend Section 10.500 to state that WEA-capable mobile devices must preserve Alert Messages in an easily accessible format and location until the Alert Message expires. We seek comment on this proposal. We seek comment on the various approaches that Participating CMS Providers currently take to Alert Message preservation, and on any best practices that have emerged in this area. We seek comment on whether we should standardize the manner in which Participating CMS Providers preserve Alert Messages, informed by relevant best practices.

42. We seek comment on the extent to which Participating CMS Providers currently offer users the ability to access Alert Messages after they have been viewed and dismissed. Is Blackberry, Android and Windows' practice of providing access to dismissed Alert Messages in an ''inbox'' or in ''message history'' consistent among all devices and providers? Section 10.420 specifies ''Expiration Time'' as a required CAP element in WEA Alert Messages. Is it feasible to use this CAP element as a basis for identifying the time at which an Alert Message should be discarded? If WEA Alert Messages are retained past this expiration time, Denver OEMHS expresses concern that users will view expired Alert Messages and assume that they are current, causing confusion and panic. Where Alert Messages are preserved for user review, for how long are they preserved? If Alert Messages continue to be preserved after the underlying emergency condition has expired, are expired Alert Messages clearly marked as such to prevent user confusion? To what extent do Participating CMS Providers' existing practices achieve our goal of providing subscribers with a straightforward method of accessing Alert Messages until they expire?

43. Based on the comments, we believe that having continued access to WEA Alert Messages, including information regarding protective measures the public can take to protect life and property, could promote superior public safety outcomes. NYCEM and APCO have already suggested several use cases in which public response outcomes could be improved through easy access to active Alert Messages, such as to review details about shelter locations and commodity distribution points, and to recall complex information presented in longer WEA Alert Messages. Further, FEMA states that requiring appropriate alert preservation ''would reduce user confusion, make training easier, and would require only one educational campaign if preservation was consistent across platforms.'' FEMA further states that requiring appropriate alert preservation ''could alleviate some milling behavior, as some will search for alerts on the internet once dismissed to find the content.'' We seek comment on these analyses, as well as on additional use cases in which access to pending Alert Messages could have public safety benefits.

4. Earthquake Alert Prioritization

a. Background

44. As we discussed in the *Report and Order,* Sections 10.320 and 10.410 of the Commission's WEA rules require Participating CMS Providers to program their Alert Gateways to process Alert Messages on a FIFO basis, except for Presidential Alerts, which must be processed ''upon receipt,'' before any non-Presidential Alert Messages that may also be queued for transmission. In the *WEA NPRM,* we sought comment on whether we should amend Section 10.410 of the Commission's rules to address prioritization at the CMS Provider's Gateway, in transit, and at the mobile device. Subsequently, the FY2016 Omnibus Appropriations Explanatory Statement directed the FCC to report to the Appropriations Committee on all regulatory and statutory changes that would be necessary to ensure that earthquake-related emergency alerts can be received by the public in fewer than three seconds using IPAWS and its associated alerting systems, including WEA. Earthquake warnings are currently issued as Imminent Threat Alerts, but it is unclear whether Participating CMS Providers' WEA infrastructure is able to process and transmit these Alert Messages fast enough for them to provide timely warning to the public, particularly to those that are closest to the epicenter. To be effective, it is crucial that these messages are delivered as rapidly as possible because, in order to be effective, they must be delivered to the public in advance of fast-travelling seismic waves. ATIS states that it would be technically feasible to transmit earthquake-related Alert Messages from the Alert Gateway upon receipt in order to expedite their transmission to the public. AT&T states, however that ''[w]ithout a re-design of the entire system, it is not possible to prioritize WEA messages on anything other than a FIFO basis.''

45. We propose to require Participating CMS Providers to deliver earthquake-related Alert Messages to the public in fewer than three seconds, measured from the time an earthquake-related Alert Message is created to when it is delivered and displayed at the mobile device. We seek comment on the parameters for WEA to deliver earthquake alerts in less than three seconds, including any operational or regulatory changes that may be necessary in order to achieve this objective. We seek comment on the appropriate points by which to measure the applicable delivery timeframe. Should the applicable timeframe be measured from the time the alert originator issues the earthquake alert to the time it arrives at the end user device? In order to meet our end-to-end latency objective while respecting the limitations of Participating CMS Provider infrastructure, should the delivery delay from the IPAWS Alert Gateway to the end user be limited to two seconds? If Alert Messages are not received by all WEA-capable mobile devices in the target area simultaneously, how should we determine whether earthquake alerts are being delivered on time to meet our proposed requirement? We seek comment on these proposals, as well as any potential alternatives. We also seek

comment on their costs and benefits. In addition, we seek comment on the implementation timeframe in which delivery of earthquake alerts in fewer than three seconds could be achieved. Would this be achievable within the next thirty months? If not, how much time would be needed?

46. In order to help eliminate any delays that could unnecessarily affect the delivery of an earthquake alert, we seek comment on whether we should require prioritization of earthquake-related Alert Messages at the CMS Provider Alert Gateway by processing them ''upon receipt,'' before any non-Presidential Alert that may also be queued for transmission. We expect that prioritization at the CMS Provider Alert Gateway would remove the possibility of any queuing delay that may occur due to simultaneous arrival of multiple alerts. We seek comment on the extent to which prioritizing earthquake alerts at the Alert Gateway would reduce their end-to-end latency in instances where the Alert Gateway is processing more than one Alert Message at a time, as well as in other instances. We also seek comment on whether it would be appropriate to prioritize earthquake alerts in transit over other Alert Messages or control channel activity if giving them elevated priority at the Participating CMS Provider Alert Gateway would not sufficiently reduce delivery latency for them to arrive on time to save lives. We note that WEA Alert Message segments are transmitted by the Radio Access Network (RAN) every 80ms to 5.12 seconds. Could standardizing the transmission periodicity of WEA message segments reduce end-to-end alert delivery latency for all WEA Alert Messages? What are the advantages and disadvantages of shorter WEA transmission periods? Can they be changed dynamically? We seek comment on the extent to which giving earthquake alerts priority at the Alert Gateway, in transit, and through other means could enable earthquake-related Alert Messages to be delivered to the public in fewer than three seconds. Even if prioritization of earthquake alerts at the Alert Gateway, by itself, would not be sufficient, should we require such prioritization as an intermediate step towards this goal? We also seek comment on whether any other types of events merit higher priority treatment because of their extreme time sensitivity (*e.g.,* hurricane, tornadoes, bioterrorism, epidemic crises).

47. We seek comment on any technical issues that prioritizing earthquake alerts in transit might present for Participating CMS Providers, and on when this standard could feasibly be achieved. In the alternative, we seek comment on whether a different Alert Message latency requirement would strike a more appropriate balance between the costs of prioritization and the benefits of earthquake early warning. With respect to AT&T's perspective that changing the way that Alert Messages are prioritized would require a ''re-design of the entire system,'' we seek comment on what, if any aspects of the WEA system would need to be redesigned in order to allow earthquake alerts to be delivered to the public in fewer than three seconds. Why, if at all, would changing the way that the Participating CMS Provider Alert Gateway prioritizes WEA Alert Messages affect any aspect of the WEA system other than the Participating CMS Provider Alert Gateway itself? From a technical standpoint, how is it currently possible to prioritize Presidential Alerts but not other types of Alert Messages? We anticipate that changing the manner in which this Gateway handles earthquake alerts would necessitate revisions to Gateway software, and relevant standards. We seek comment on this analysis. Can the Participating CMS Provider Alert Gateway's standards and software be updated to allow it to distinguish earthquake alerts from other Imminent Threat Alerts, for example, by reference to the its CAP ''event code'' parameter? If not, what steps should we take to allow for earthquake-related alerts to be treated differently from other Imminent Threat Alerts? We anticipate that reducing the end-to-end latency for earthquake alerts will facilitate the use of WEA during such incidents, providing a unique mechanism in the United States for warning the public about earthquakes before the damaging tremors occur. We observe that Japan's Earthquake and Tsunami Warning System (ETWS) is currently the only earthquake early warning service in the world that integrates mass earthquake-related communications with cellular networks. We anticipate that making WEA an effective platform for early earthquake warnings could, in combination with other earthquake mitigation efforts, help to mitigate the $4.4 billion dollars in earthquake-related losses FEMA estimates that the United States suffers annually, by saving lives and preventing and mitigating injuries, thereby reducing income loss and by helping to mitigate damage to infrastructure by alerting members of the public who are in a position to take preparatory actions to prevent damage in the event of an earthquake. We seek comment on this analysis, including to on the extent to which such prioritization would mitigate earthquake-related losses and on the costs of any related upgrades to WEA to permit such prioritization.

5. Disaster Relief Messaging

48. Commenters address several potential uses for WEA as a secondary messaging service, *i.e.,* a tool for communicating to the public emergency instructions intended to supplement information provided in the initial (primary) message. For example, NYCEM, Ashtabula County EMA and the California Governor's OES observe that our new Alert Message classification, Public Safety Messages, creates a framework for secondary messaging that can assist with disaster recovery efforts. In the *Alerting Paradigm NPRM* as well as in the *WEA NPRM,* we sought comment on the extent to which emergency managers leverage targeted community feedback during and after emergency situations to disseminate and gather information. We observed that the Peta Jakarta initiative in Indonesia may provide an example of how a government alert initiator can leverage crowdsourced data to increase the overall effectiveness of alerts. While many emergency management agencies expressed concern about the potential for an additional data stream for crowdsourced information to overwhelm already understaffed Public Safety Answering Points (PSAPs), ''NYCEM strongly believes that the future of crowdsourcing is through leveraging individual consumer cellular phones by upgrading the Wireless Emergency Alert System to support bidirectional, ''many-to-one'' communication.'' CSRIC V finds that the ability to gather information from the community (many-to-one communication) can make alerting (one-to-many communication) more effective if ''appropriately integrated into operations in a way that is responsive to the context of operation.'' CSRIC V identifies three use cases where many-to-one communications could be a particularly beneficial supplement to one-to-many communications, gathering targeted community feedback, assessing evacuation compliance, and during active shooter scenarios. CSRIC V recommends that ''FEMA should investigate modifying IPAWS to support '[m]any to one' communication and data collection,'' that ''ATIS should study the feasibility of mechanisms for the delivery of ''many to one'' data to FEMA IPAWS,'' and that the Commission should convene a panel of relevant experts to promote data science literacy among emergency managers and

establish best practices for using data gathered from ''social media'' monitoring. NAB and NPR also encourage the Commission to recognize the consumer benefits of Alert Messages that direct the public to turn on their radios for additional information during disaster recovery efforts.

49. In light of the foregoing, we seek comment on the potential for WEA to serve as a secondary messaging tool for emergency managers, specifically during disaster relief efforts. Specifically, we seek comment on how to enhance WEA's support for many-back-to-one communication to facilitate emergency managers' response planning efforts, and on whether WEA can be made a more useful tool during and after emergencies by facilitating its ability to interface other authoritative sources of information. Are there existing needs or gaps in the public communications tools currently available to emergency managers for use during disaster relief efforts that WEA can fill? What, if any, critical capacities does WEA lack that could inhibit its utility for post-disaster communications?

50. We seek comment on improvements to WEA that we should consider in order to ensure that it is optimized for this use, including by enabling WEA to be used as a tool for queueing the collection of targeted community feedback during disaster recovery efforts, to measure evacuation effectiveness, and during active shooter scenarios, as recommended by CSRIC V. We seek comment on whether using WEA in this manner could assist emergency management agencies' resource-need pairing during emergencies, and on any additional use cases where ''many-to-one'' feedback could improve emergency response. We seek comment from technology vendors who have developed innovative solutions to aggregating and analyzing public response on the potential for implementation of those technologies in the emergency management context. We seek comment on whether best practices based in data science literacy are available to facilitate emergency managers' skillful use of targeted community feedback, and if not, on whether we should direct the Public Safety and Homeland Security Bureau to convene a panel of experts to produce recommendations for this purpose, as recommended by CSRIC V. We also seek comment on the extent to which WEA can be used to funnel milling behavior towards other authoritative sources of information, such as radio or television, that may be better fit to provide critical information to the public in certain circumstances. Would such an approach make WEA more useful to emergency managers in disaster relief situations?

B. Incorporating Future Technical Advancements To Improve WEA

1. Multimedia Alerting

51. As noted above, we are committed to allowing the public to realize the benefits of multimedia content in WEA, and we propose that an appropriate path to achieve this goal would be to require support for certain multimedia content, including thumbnail-sized images and hazard symbols, in Public Safety Messages on 4G LTE and future networks. We recognize that Participating CMS Providers have concerns about message delivery latency and network congestion that may result from including multimedia in WEA Alert Messages. Further, we acknowledge the record indicates that further standards development is necessary to support multimedia capabilities in WEA. As we discuss in further detail below, we believe these issues can be addressed given an appropriate regulatory framework and timeframe for compliance. Accordingly, we seek to develop the record on data constraints and technical parameters that should be associated with developing and implementing this functionality, and on a reasonable timeframe within which to require Participating CMS Providers to support it. Pursuant to the approach we propose to adopt, emergency management agencies could use Public Safety Messages to transmit thumbnail-sized images of evacuation routes in connection with Imminent Threat Alerts, an image of the face of a missing child after an AMBER Alert, or specific instructions for protective action to the access and functional needs community through the use of hazard symbols. We invite commenters to offer additional use cases where this functionality could help meet the public's need for actionable, multimedia-enabled content during emergencies.

52. With respect to the potential for alert delivery latency, we observe that, according to the *ATIS Feasibility Study for LTE WEA Message Length,* WEA Alert Message segments can be transmitted every 80 milliseconds to 5.12 seconds. We reason, therefore, that a thumbnail-sized image could be transmitted over WEA cell broadcast in between 0.88 seconds and 56.32 seconds. We would not want the transmission of multimedia content to delay receipt of the most time-sensitive Alert Message text. At the same time, however, we also believe that there are circumstances where the public would benefit from the receipt of multimedia content over WEA cell broadcast, even if they have to wait a minute to receive it. We therefore propose to require support for multimedia content only in Public Safety Messages, which may contain information that is not as time-sensitive as other types of Alert Messages. As Alert Messages in the Public Safety Message classification are designed for issuance for in connection with Alert Messages of other types, we believe they would provide an appropriate vehicle for multimedia-enabled content even when they cannot be delivered until minutes after the initial Imminent Threat or AMBER Alert delivers the primary, text-based Alert Message. We seek comment on this analysis.

53. We seek comment on any appropriate technical constraints that should apply to the multimedia content that Participating CMS Providers would be required to support. We anticipate that constraints on the permissible size of multimedia data files would also help Participating CMS Providers to manage network loading. The *ATIS Feasibility Study for WEA Supplemental Text* shows that transmitting a thumbnail-sized photo over WEA cell broadcast would require the transmission of at least eleven WEA binary messages. The *ATIS Feasibility Study for WEA Supplemental Text* considers a ''thumbnail-sized photo'' to be approximately 1.5 x 1.5 inches, to have a resolution of 72 dots per inch (DPI), and to be presented as using 120 x 120 pixels. ATIS reasons that a thumbnail-sized image would be 14,400 bytes in size if an 8-bit color scale is used, and would require the broadcast of 3600 octets, assuming 25 percent compression. We seek comment on whether that 14,400 bytes would be an appropriate maximum size for any multimedia content that a Participating CMS Provider could be required to transmit, as well as on any additional technical specifications or parameters that could facilitate multimedia transmission. We seek comment on any other implications or considerations we should take into account.

54. With respect to the integration of support for hazard symbols into WEA's core functionality, CSRIC IV and CSRIC V recommend further study. The *ATIS Feasibility Study for WEA Supplemental Text* recommends that a study of the ''User Experience Design'' covering the ''human-computer interaction'' between mobile users and hazard symbols should be undertaken by the WEA stakeholders followed by global standardization. According to ATIS,

standards would be needed to identify the specific hazard symbols appropriate for this use, and to describe hazard warning icon delivery to the mobile device, either via mobile device software or cell broadcast. We seek comment on this analysis. Would it be feasible to integrate support for hazard symbols into WEA using the GSM–7 character set or a Unicode character set? If so, would this approach offer a less burdensome alternative to supporting hazard symbols in all Alert Messages?

55. With respect to concerns in the record regarding the possibility for increased network load, we propose to allow Participating CMS Providers to use network congestion mitigation strategies to feasibly and timely deliver multimedia-enabled Public Safety Messages. For example, we seek comment on whether staggering transmission of multimedia message segments could facilitate delivery of this content to subscribers, while mitigating potential network congestion concerns. Would it make sense to constrain any requirement to support multimedia to devices operating on 4G LTE and future networks? We seek comment on best practices that emergency management agencies could implement with respect to multimedia messaging if the transmission of such content implicated greater delay than text-only Alert Messages, and if Alert Messages that contained multimedia content could not be received by members of their communities on legacy networks or that are using legacy devices that no longer accept software updates. Recognizing the limitations of cell broadcast technology, to what extent would a requirement to support thumbnail-sized images and hazard symbols spur Participating CMS Providers to integrate new technologies into their WEA systems that could improve their ability to support the low-latency transmission of high-quality multimedia content? For example, commenters agree that Multimedia Broadcast Multicast Service (eMBMS) would permit the broadcast of ''large amounts of data, including multimedia content.'' We seek comment on the technical steps that would be required to integrate technology that supports the transmission of multimedia content into WEA.

56. Allowing multimedia content in WEA Alert Messages would have tremendous public safety benefits. NYCEM, FEMA and TDI, for example, believe that allowing multimedia content in WEA Alert Messages would significantly contribute to Alert Message comprehension, particularly for individuals with disabilities, and FEMA adds that the use of graphical symbols could improve Alert Message interpretation by individuals with limited English proficiency. NCMEC states that multimedia content would ''greatly enhance the immediate usefulness of AMBER Alerts.'' San Joaquin County OES adds that multimedia content in WEA Alert Messages would hasten protective action taking and reduce milling. We seek comment on these analyses, as well as on any additional public safety benefits that multimedia messaging may enable. Even though Chester County EMA and The Weather Company suggest the inclusion of multimedia would be unnecessary in light of the availability of embedded references and ''third party apps and television that users normally use,'' we find that unique benefits could result from including multimedia content in Alert Messages, especially as Participating CMS Providers' ability to support this functionality evolves along with advancements in technology. For example, WEA Public Safety Messages could be used to push an authoritative interactive map to every community member with a WEA-capable mobile device that shows the recipient's location relative to evacuation routes, shelter locations or resource distribution points. For communities struggling to recover from natural disasters, for example, this functionality would hold tremendous public safety value above and apart from multimedia-enabled emergency information available through other sources that in any case may not be as readily available as a consumer's mobile device. We also seek comment on whether those benefits would be particularly acute when implemented in an authoritative alerting services such as WEA that the public receives by default.

2. Multilingual Alerting

57. We observe that, according to commenters, expanding the language capabilities of WEA has potential to yield particular benefits for those with limited English proficiency. The record suggests, however, that the technical issues that prevented Participating CMS Providers from supporting multilingual Alert Messages when WEA was first deployed continue to limit their ability to support Alert Messages in languages other than English and Spanish. While FEMA states that IPAWS and CAP have the capacity to support Alert Messages in languages other than English and Spanish, additional languages are not currently supported in Participating CMS Provider networks. According to Participating CMS Providers, significant standards-setting work and potentially support for new character sets would be required in order to enable them to support WEA Alert Messages in languages other than English and Spanish. Further, AT&T and Verizon observe that each additional WEA Alert Message language option will require Participating CMS Providers to transmit an additional Alert Message, which could threaten network capacity and risk alert delivery delays. In light of these ongoing issues and additional data, we agree with T-Mobile that ''[t]he Commission should promote further study of the technical impact of multilingual WEA messages so that such messages can be incorporated into the WEA system in the future without creating unintended, adverse impacts.''

58. Only 79 percent of individuals living in the United States that are 5-years old or older speak only English at home. According to the *ACS Language Report,* the top ten most spoken languages in the U.S. among individuals 5-years old or older are English, Spanish or Spanish Creole, Chinese, French or French Creole, Tagalog, Vietnamese, Korean, Arabic, Russian, and African languages. English-speaking ability varies greatly, even among speakers of the top ten languages in the United States. According to recent census data, ''less than 50 percent of those who spoke Korean, Chinese, or Vietnamese spoke English 'very well.' '' According to the *ACS Language Report,* ''[p]eople who cannot speak English 'very well' can be helped with translation services, education, or assistance in accessing government services.''

59. We seek comment on the potential benefits of requiring Participating CMS Providers to support Alert Messages in languages other than English and Spanish. To what extent would emergency management agencies initiate Alert Messages in languages in addition to English and Spanish were Participating CMS Providers required to support them? To what extent would CMS Provider support for additional languages incent emergency management agencies to further develop their capabilities in initiating Alert Messages in those languages where relevant to their respective communities? What, if any, additional steps can we take to support emergency management agencies' efforts to develop multilingual alerting capabilities? We expect that emergency management agencies already integrate individuals who don't speak English very well into their communities' emergency response plans, and we seek comment on whether increasing emergency management agencies' multilingual alerting capability could help to further

improve disaster preparedness for these communities. How do emergency management agencies currently expect individuals with limited English proficiency to receive and respond to emergency information? Are the emergency management mechanisms currently in place sufficient to safeguard those individuals during crises?

60. If we were to adopt rules to deepen WEA's language capabilities, we seek comment on whether we should prioritize support for those languages predominantly spoken in communities where, according to Census data, 50 percent or fewer speak English ''very well'' (*e.g.,* Vietnamese, Chinese, Korean). Is the area of greatest need with respect to WEA's language capabilities ensuring that people who struggle with English comprehension can understand emergency communications? In the alternative, should we prioritize support for the largest language communities in the United States, notwithstanding the tendency of individuals in those language groups to speak English ''very well''? We observe, for example, that, according to recent Census data, English and Spanish are by far the most popular languages in the United States, with Chinese and French a distant third and fourth.

61. We seek comment on whether supporting Alert Messages written in ideographic languages, such as Vietnamese, Chinese and Korean, would pose unique challenges for WEA stakeholders, including Participating CMS Providers and emergency mangers. We note that WEA messages use GSM 7-bit encoding, and that the 3GPP standard for cell broadcast allows switching to the basic Unicode (UCS–2) character set, which includes all living languages, in order to provide support for modern, ideographic languages such as Kanji. Do Participating CMS Providers' WEA infrastructure and WEA-capable mobile devices support this functionality? If not, what steps would be necessary to incorporate Unicode into WEA? We also seek comment on whether emergency management agencies would face particular difficulties in initiating Alert Messages in ideographic languages. Does alert origination software currently support initiating Alert Messages in ideographic languages? If not, what steps would be required in order to upgrade this software? Are there additional standards, protocols and system updates that would be required to enable alerting in Vietnamese, Chinese and Korean in particular? Further, we seek comment on whether WEA Alert Messages can be made available in American Sign Language (ASL) for subscribers that are deaf or hard of hearing. How would the provision of WEA Alert Messages in ASL allow for better accessibility to those who are ASL-fluent?

62. In addition to any potential changes to the WEA character set that may be required, we seek comment on any necessary preconditions to supporting additional languages in WEA in general, and to supporting Korean, Vietnamese or Chinese Alert Messages in particular. We also seek comment on whether support for additional languages would be burdensome for non-nationwide (*e.g.,* regional, small, and rural) Participating CMS Providers, and if so, whether there are steps that we can take to accommodate these entities to make compliance more feasible. Would it be more appropriate for non-nationwide Participating CMS Providers to be required to support only the those particular languages, other than English and Spanish, that are predominant in the particular areas in which they provide service? We seek comment on any alternative approaches that would help achieve our objective of promoting accessibility of WEA Alert Messages.

3. Matching the Geographic Target Area

63. While our geo-targeting requirement, as amended above, will improve WEA geo-targeting by facilitating the delivery of Alert Messages to a more granular polygon level, the limitations of cell broadcast-based geo-targeting may result in continued over-alerting. According to CSRIC IV, the ''ideal case'' from an alert originator perspective would be where ''all WEA-enabled mobile devices in the geographic area affected by an emergency event would receive the WEA Alert Message broadcast, and no mobile devices outside the defined alert area would receive those particular WEA Alert Message broadcasts.'' ''However,'' CSRIC IV reports, ''this ideal case cannot be realized using currently deployed cell broadcast alone.'' CSRIC V recommends that the Commission collaborate with WEA stakeholders to develop standards and implement systems that support enhanced, device-based geo-targeting. CSRIC V recommends that the Commission set a goal that Participating CMS Providers geo-target Alert Messages in a manner that includes ''100% of the targeted devices within the specified alert area with not more than .10 mile overshoot,'' and states that WEA stakeholders, including Participating CMS Providers, ''have committed to working to close the gap between current capabilities and aspirational goals.''

64. As we emphasize above, more granular geo-targeting remains a critical need for both consumers and emergency managers. Accordingly, we propose to require Participating CMS Providers to match the target area specified by alert originators. We anticipate that this may require Participating CMS Providers to leveraging the location sense of WEA-capable mobile devices on their networks. In the following paragraphs, we seek comment on how we should define ''matching'' the target area for purposes of any such requirement, as well as on steps that alert initiators and Participating CMS Providers can take to minimize alert delivery latency and maximize the amount of data available for other Alert Message content. We also seek comment on the readiness of innovations that could allow alert initiators to geo-target more flexibly, and to smaller areas.

65. As an initial matter, should a Participating CMS Provider be considered to have ''matched'' the targeted area for the purpose of this requirement if, as recommended by CSRIC V, 100 percent of devices within the targeted area receive the Alert Message with not more than 0.1 mile overshoot? In the alternative, if providers are leveraging the same technology in the WEA context that is being used to provide indoor location, would it make sense to harmonize our geo-targeting accuracy requirement for WEA with our wireless E911 indoor location accuracy requirements? If not, why not? Further, would an alternative accuracy requirement be appropriate for non-nationwide Participating CMS Providers? We seek comment on any alternative approaches to defining ''matching'' for the purposes of assessing compliance with our proposed requirement. In circumstances where Participating CMS Providers are unable to match the target area, we propose that they should be required to provide their best approximation of the target area, as we require in the *Order.* We seek comment on this approach.

66. The record indicates that it will be technically feasible for Participating CMS Providers to comply with our requirement that they geo-target Alert Messages to an area that matches the target area, given appropriate time for the development of relevant standards and network modifications. We expect that Participating CMS Providers will be able to geo-fence their transmission of Alert Messages by transmitting target area coordinates to 100 percent of mobile devices in the target area, erring on the side of over-inclusion where

necessary. WEA-capable mobile devices would receive the Alert Message, including the target area coordinates, and determine whether they are currently located within the area those coordinates describe. If and only if the mobile device is within the target area, it would display the Alert Message to the subscriber. Commenters indicate that the suppression of the Alert Messages on mobile devices that are outside of the target area (geo-fencing) would allow Participating CMS Providers to match the target area specified by alert originators. We seek comment on this analysis, including any alternative approaches that Participating CMS Providers could use to match the target area or to implement a device-based approach to geo-targeting. The record indicates that technical issues, such as potential increases in message delivery latency, and reductions in the amount of data available for Alert Message text, can be resolved. We seek comment on how Participating CMS Providers will address these issues in conversation with other relevant WEA stakeholders. We seek comment on feasible methods Participating CMS Providers could use to mitigate sources of alert delivery latency that may be implicated by geo-targeting Alert Messages to an area that matches the target area specified by the alert originator. Participating CMS Providers and ATIS agree that meeting such an accurate geo-targeting standard could cause message delivery delay due to the device needing to determine its location before displaying the message, and due to network constraints. ATIS states that ''the only currently readily available technology [for device-based geo-fencing] is GPS/GNSS'' and that, without network assistance, the ''time to acquire a GPS position can be over 13 minutes from a cold start . . . and up to 30 seconds for a warm start.'' To what extent could Assisted GPS reduce these times and to what extent would the CMS network be burdened by providing this assistance? Further, we seek comment on how long the mobile device should wait while attempting to determine its current location (*e.g.,* acceptable Time-To-First-Fix (TTFF))? We note that, in the 911 context, we have established a maximum TTFF latency standard of 30 seconds for outdoor calls. Would that same standard be appropriate for geo-targeting to an area that matches the target area in light of our concerns about alert delivery latency? Finally, what should be the action of the mobile device if the mobile device location cannot be determined or cannot be determined within the time limit, for example, if a mobile device is turned off, or if its location services are turned off? Should the default setting be to display the Alert Message?

67. We seek comment on the extent to which polygon compression techniques and alert originator best practices could maximize the amount of data that remains for Alert Message content if Alert Message coordinates are transmitted along with content to WEA-capable mobile devices. ATIS concludes that each coordinate pair would require data equivalent to that needed to display thirteen characters using current methods. However, researchers have examined methods of compressing coordinate data to consume between 9.7 percent and 23.6 percent of this data. We seek comment on feasible methods of leveraging polygon compression techniques in WEA. Should such techniques be used to set a maximum on the amount of data that can be consumed by polygon coordinates? Further, we seek comment on appropriate best practices for the number of decimal places to which a coordinate should be specified in order to conserve Alert Message space for text. CSRIC V recommends that alert originators determine the granularity of alert areas using vertices with two to five decimal places, depending on the nature of the hazard. CSRIC V finds that this would allow alert originators to target Alert Messages to with precision from 1.1 km to 1.1 meters. We seek comment on this recommendation and analysis. We note that, under current standards, a valid polygon consists of one-hundred coordinate pairs or fewer. Would rules or best practices be appropriate to determine the maximum number of coordinate pairs that should be included in an Alert Message? We seek comment on any additional technical challenges that Participating CMS Providers may face in complying with a more accurate geo-targeting standard, and on feasible methods of overcoming them.

68. While we believe that a device-based approach is most likely to enable Participating CMS Providers to match the target area, we seek comment on whether continued focus on network-based approaches could enable Participating CMS Providers to meet this accuracy requirement. For example, could geo-targeting be improved by leveraging the relatively smaller coverage areas of network-based technologies, such as small cell technology, distributed antenna systems (DAS), Wi-Fi access points, beacons, commercial location-based services (cLBS), institutional and enterprise location systems, or smart building technology? We observe that these network-based technologies are widely deployed across the United States, and particularly in urban areas. Are CMS Provider networks configured to be able to send a WEA Alert Message over the control channel to these network-based technologies? What steps would be necessary to enable these technologies to assist in geo-targeting? Since the radio frequency propagation areas of these technologies are significantly smaller than the propagation areas for large cell sites, do they hold potential to improve geo-targeting? If not, why not? We also seek comment on the reliability of network-based technologies relative to the larger transmission facilities Participating CMS Providers traditionally use for WEA cell broadcast. Would relying on these technologies as a path forward to further improving geo-targeting leave the system vulnerable to becoming far less accurate when its accuracy is needed most, including during Imminent Threat Alerts?

69. Finally, we seek comment on whether additional, incremental improvements to geo-targeting could be achieved through standards updates that could allow Participating CMS Providers to support ''nesting polygons.'' Nesting polygons describe overlapping geographic areas where one polygon is situated, or ''nests,'' at least in part, within the boundaries of another, larger polygon. We seek comment on the extent to which existing network technologies can be leveraged to support nesting polygons, provided that relevant standards are updated to support them. We anticipate that a scenario where nesting polygons could be useful would be where one WEA Alert Message is appropriate for broadcast in the area where an incident, such as a chemical spill, has occurred (*e.g.,* an instruction to shelter in place), and another WEA Alert Message is appropriate for broadcast in the surrounding area (*e.g.,* an instruction to evacuate). We seek comment on this example, and invite commenters to specify additional use cases where it would be useful to be able to specify nesting polygons as a target area. According to ATIS, current standards support geo-targeting Alert Messages to multiple polygons, but existing standards would interpret multiple, overlapping polygons as the union of those polygons. Nesting polygons, on the other hand, would require CMS networks to sometimes interpret overlapping polygons as providing an instruction to ''subtract'' the internal polygon from the external polygon. According to ATIS, this functionality

would require an update to J–STD 101 as well as to the CAP standard. Would additional updates to alert origination software be required to support sending different messages to nested polygons?

70. We reason that achieving a geo-targeting standard whereby Participating CMS Providers can match the target area specified by an alert originator, either through device- or network-based techniques, would have tremendous benefits for public safety, and would eliminate the current dangers of poor geo-targeting that deter many emergency managers from becoming authorized as WEA alert originators. As discussed above, alert originators continue to demand more accurate geo-targeting from WEA before they will rely on it for emergency messaging in situations where it could be dangerous for individuals in areas adjacent to the target area to receive instructions intended only for individuals within the target area. Further, each incremental improvement that Participating CMS Providers can make to geo-targeting incrementally reduces alert fatigue, and increases the public's trust in WEA as an alerting platform, thereby reducing milling and, potentially, network congestion. We seek comment on this reasoning. Finally, we note that the *ATIS Feasibility Study for Supplemental Text* observed that delivering target area coordinates to the mobile device consistent with a device-based approach to geo-targeting would be the first step towards enabling WEA Alert Messages to support high-information maps, an improvement that emergency managers universally endorse. We seek comment on this observation. We also seek comment on alternative approaches we can take to improving WEA geo-targeting that would meet emergency managers' objectives while presenting lesser cost burdens to Participating CMS Providers.

4. WEA on 5G Networks

71. As we noted in our *Spectrum Frontiers* proceeding in July 2016, 5G networks ''will enable valuable new services, and accelerating the deployment of those services is a national priority.'' As 5G networks and devices are developed, we expect WEA capabilities to evolve as well, consistent with Congress' vision in enacting the WARN Act. Given the importance of our Nation's public alert and warning systems to promoting emergency response readiness, we must ensure that WEA Alert Messages continue to provide the public with vital and necessary information to take appropriate action to protect their families and property.

72. While we understand that specific WEA capabilities for 5G networks and devices are not yet developed, we believe it is appropriate to seek comment on those capabilities now in light of the importance of designing these networks and devices with WEA capabilities in the early stages of development and throughout their development process. We disagree with CTIA that ''it is premature at this time to address specific WEA capabilities that 5G might enable.'' Participating CMS Providers are already examining how best to integrate 5G technologies into their networks and industry stakeholders are currently working to shape the strategic development of the 5G ecosystem. We observe that Verizon is expected to begin 5G field trials in the next few months, and most experts predict that 5G will be widely available as soon as 2020. Further, the record suggests that technological upgrades can be costly and time-consuming, and we reason that including WEA alerts and warnings in 5G from the beginning can reduce total costs for Participating CMS Providers and hasten the deployment of improvements to WEA that could benefit the public. We therefore seek to initiate a dialogue that will foster a better understanding of how Participating CMS Providers intend to incorporate WEA capabilities into their 5G offerings, as well as to identify areas where we can help provide regulatory clarity, where needed, that can drive design and investment. For example, AT&T opines that ''[w]ith the standards for 5G now under development, it is important to have agreement that 360 characters is the maximum length for 4G and future services.''

73. In light of the foregoing, we seek comment on how to best incorporate alerts and warnings into the development of 5G technologies, and on how 5G technologies may enable further enhancements to WEA. What additional measures could the Commission take to facilitate the incorporation of WEA capabilities into 5G as these networks and devices are being designed? We seek comment on what, if any, steps the Commission should take to continue to ensure that WEA evolves along with advancements in technology in the 5G environment. What standards need to be developed or what other mechanisms need to be in place to ensure that WEA will be incorporated, and what actions are providers undertaking already? Elsewhere in this *FNPRM,* we seek comment on how improvements in technology can help improve WEA, in terms of microtargeting delivery of Alert Messages to a precise geographic location, incorporating multimedia capabilities to improve message content, and facilitating swifter delivery of critical early earthquake alerts where every second counts. Is it anticipated that there will be additional space for WEA in 5G system information blocks than is currently allocated on the 4G control channel? To what extent will 5G introduce new capabilities that will permit additional life-saving enhancements to WEA? Are there any existing rules governing WEA that would be inapplicable to 5G or that would otherwise require adaptation to address 5G capabilities? We seek comment on how to enable further enhancements to WEA in 5G technologies, and on the obligations that CMS Providers that elect to provide WEA on 5G networks should incur, including related costs and benefits.

C. Developing Consumer Education Tools

1. Promoting Informed Consumer Choice at the Point of Sale

74. In the *WEA Third Report and Order,* the Commission adopted certain disclosure requirements in order to ensure that CMS Providers ''convey sufficient information'' to the public about the nature of their participation in WEA. CMS Providers electing in whole to transmit WEA Alert Messages are not required to provide notification of their participation at the point of sale. CMS Providers participating in part, on the other hand, are required to provide clear and conspicuous notice to new subscribers of their partial election at the point of sale. Specifically, CMS Providers participating in part must, at a minimum, state the following:

> [[CMS provider]] has chosen to offer wireless emergency alerts within portions of its service area, as defined by the terms and conditions of its service agreement, on wireless emergency alert capable devices. There is no additional charge for these wireless emergency alerts.
>
> Wireless emergency alerts may not be available on all devices or in the entire service area, or if a subscriber is outside of the [[CMS provider]] service area. For details on the availability of this service and wireless emergency alert capable devices, please ask a sales representative, or go to [[CMS provider's URL]].

75. Similarly, CMS Providers electing not to transmit WEA Alert Messages are required to offer, at a minimum, the following point-of-sale notification, ''[[CMS provider]] presently does not transmit wireless emergency alerts.'' We noted that our decision allowed, but did not require the disclosure of additional information regarding the technical

limitations of the WEA service offered by a Participating CMS Provider.

76. We propose to require CMS Providers to disclose sufficient information at the point of sale to allow customers to make an informed decision about whether they would consistently receive WEA Alert Messages if they were to become a subscriber. To what extent do CMS Providers voluntarily provide additional information at the point of sale regarding the nature of their WEA participation beyond any disclosure required by our rules? Is our existing requirement, which requires CMS Providers participating in part to inform consumers at the point of sale that WEA ''may not be available on all devices or in the entire service area,'' sufficient to inform potential subscribers of whether they will receive a potentially life-saving alert through the Participating CMS Provider's network? If this point-of-sale notification is insufficient to support educated consumer choice among providers, what additional information would help to inform this choice and allow market forces to more aptly influence further improvements to WEA?

77. If we base our proposed definitions of modes of participation in WEA on the devices a Participating CMS Provider makes WEA capable, the extent to which WEA is offered in their geographic service area, and the technologies they commit to use in support of their WEA service, would it be reasonable to require corresponding adjustments to consumer disclosures? We propose that, as a baseline, CMS Providers should provide information regarding the extent to which they offer WEA (in what geographic areas, and on what devices) at the point of sale. Would this information be sufficient to promote informed consumer choice? Should we also require CMS Providers to disclose at the point of sale the specific network technologies that they commit to use in offering WEA? We seek comment on the extent to which knowledge of the specific technologies that competing CMS Providers will use to support WEA would promote more informed consumer choice between CMS Providers. Should this disclosure also include the extent to which the Participating CMS providers' networks are able to offer full 360-character Alert Messages? Would it be sufficient for Participating CMS Providers to provide potential subscribers with a link to a Web site describing their WEA capability at the point of sale, and would this approach help Participating CMS Providers to control costs associated with this proposal? With respect to CMS Providers who elect not to participate in WEA, should they be required to make any additional disclosures at the point of sale to ensure that consumers are aware that they will not be able to receive any potentially life-saving alerts through service with this carrier? We seek comment on the potential benefits and costs that might be associated with additional point-of-sale disclosures.

2. Promoting Informed Consumer Choice About the Receipt of WEA Alert Messages

78. Section 602(b)(2) of the WARN Act provides that ''any commercial mobile service licensee electing to transmit emergency alerts may offer subscribers the capability of preventing the subscriber's device from receiving such alerts, or classes of such alerts, other than an alert issued by the President.'' Section 10.500 of the Commission's rules requires Participating CMS Providers' WEA-capable mobile devices to maintain consumers' opt-out preferences and display alerts to the consumer consistent with those selections. Pursuant to Section 10.280, a Participating CMS Provider may provide their subscribers with the option to opt out of Imminent Threat and AMBER Alerts, and must present the consumer ''with a clear indication of what each option means, and provide examples of the types of messages the customer may not receive as a result of opting out.'' The Commission adopted these requirements in the *First Report and Order* and the *Third Report and Order,* respectively, in order to allow Participating CMS Providers to accommodate variations in their infrastructures. In the *WEA NPRM,* we sought comment on the factors that lead consumers to opt out of receiving certain Alert Messages, including whether the manner in which Participating CMS Providers present their customers with opt-out choices impacts customer participation. We sought comment on whether Participating CMS Providers could offer customers a more nuanced opt-out menu in order to improve consumer choice.

79. Apple states that ''enabling users to opt out of certain alerts at particular times or under specified conditions (such as when Do Not Disturb mode is turned on) would likely increase end-user participation.'' Microsoft agrees that consumers should have control over what types of alerts are received, and when. NWS observes that opt-out choices are currently presented in an inconsistent manner across devices and operating systems, and recommends standardizing the presentation of opt-out choices. On the other hand, ATIS expresses concern that ''adding complexity to the opt-out options may actually increase the number of subscribers choosing to opt-out of WEA,'' and Blackberry urges us to leave opt out functionality such as ''scheduling'' and ''time of day'' features to device manufacturers' discretion. CSRIC V recommends that Commission collaborate with WEA stakeholders to create a set of ''minimum specifications for an enhanced, secured and trusted, standards-based, CMSP-controlled WEA mobile device based application . . . in order to ensure high level support.''

80. We propose to require Participating CMS Providers to implement changes to the WEA application that would provide the public with more granular options regarding whether they receive WEA Alert Messages. In essence, Participating CMS Providers should provide consumers with tools that allow them to receive the alerts that they want to receive, in the manner they wish to receive them, and during the times they wish to receive them.

81. First, we propose to amend Section 10.280(b) to require that Participating CMS Providers offer their subscribers more informed choices among the Alert Message classifications that they wish to receive. We seek comment on the approaches that Participating CMS Providers currently take to ''provide their subscribers will a clear indication of what each [Alert Message] option means,'' and on specific improvements that they could make to the WEA application to enable consumers to make more informed choices among the different types of WEA Alert Messages they will receive. As demonstrated in Appendix F, some Participating CMS Providers offer their subscribers the option to choose whether to receive ''Extreme'' and ''Severe'' Alert Messages, as well as AMBER Alerts. Are these options sufficiently clear to empower consumers to make informed choices among Alert Messages? Would it be more clear if the options that Participating CMS Providers offered their subscribers tracked our alert message classifications (*i.e.,* ''AMBER Alerts,'' ''Imminent Threat Alerts,'' and ''Public Safety Messages''), or would other names or phrases be more effective in promoting clear consumer choice about the types of Alert Messages they will receive? Would it be helpful to offer consumers a full explanation of the kinds of emergency situations about which they will receive information by virtue of

remaining opted in to receive Alert Messages of that category? For example, should consumers be informed that by remaining opted in to receive Imminent Threat Alerts they will receive information about imminent threats to their life and property, including significant or extraordinary threats that have either been observed in their area or likely to occur in the near future? Should consumers be informed that by remaining opted in to receive AMBER Alerts they will receive information that will empower them to assist law enforcement in locating abducted, lost, or otherwise missing children in their area that may be in imminent danger? We seek comment on best practices that have been developed with respect to the WEA interface that offer consumers a clear and easy-to-navigate menu of choices about whether and how to receive emergency alerts.

82. We also propose to require that Participating CMS Providers enhance their subscribers' ability to personalize how they receive the Alert Messages of their choosing. In the *Report and Order* we allow Participating CMS Providers to offer their consumers the option to change the attention signal and vibration cadence for Public Safety Messages, and to receive Public Safety Messages only during certain hours. We also allow Participating CMS Providers to provide their customers with the option to specify how the vibration cadence and attention signal should be presented when a WEA Alert Message is received during an active voice or data session. We seek comment on whether we should require Participating CMS Providers to offer their subscribers a more granular suite of choices for Imminent Threat Alerts and AMBER Alerts as well, including but not limited to the options that we allow Participating CMS Providers to offer to their subscribers for Public Safety Messages, and including the ability to modify the attention signal and vibration cadence that is presented when an Alert Message is received when the phone is idle. For example, would it be feasible to require Participating CMS Providers to allow users to limit the hours within which they receive WEA AMBER Alerts (*e.g.,* only between 8:00 a.m. and 8:00 p.m.)? Would it make more sense to offer consumers the option to modify or mute the attention signal and vibration cadence for Imminent Threat Alerts at night than to offer them the option to not receive Imminent Threat Alert during the night? In the alternative, we seek comment on whether we should require Participating CMS Providers to offer their subscribers the option to cache Alert Messages, rather than simply to opt in or out. Cached Alert Messages could be received without the associated attention signal and vibration cadence, and stored in a ''WEA Inbox.'' We seek comment on this approach. Taken together with our proposal that Alert Messages be appropriately preserved for user review, would providing users with the option to receive and cache Alert Messages provide many consumers with an appropriate balance between their perceived need to receive critical information during emergencies, and their desire to minimize the intrusiveness of the WEA attention signal and vibration cadence? We seek comment on the most common reasons why consumers opt out of receiving WEA AMBER Alerts and Imminent Threat Alerts, and on any additional steps that we can take to reduce these pain points through changes to the WEA opt-out menu.

83. In the alternative, we seek comment on whether to require all Participating CMS Providers to adopt a standardized opt-out menu, as recommended by NWS, and in a manner consistent with CSRIC V's recommendation. In particular, we seek comment on the model opt-out menu produced by NWS that we attach as Appendix F. Would the subscriber choices modeled here be appropriate to standardize among Participating CMS Providers and device manufacturers? Would a standardized opt-out menu facilitate familiarity with emergency alerts across service providers, promote personalization and improve the consumer experience with WEA? We seek comment on how we could design a model WEA opt-out menu in a manner that would improve personalization without significantly increasing user-facing interface complexity? Would it be appropriate for the Commission to host a workshop for this purpose? We encourage commenters to submit visual representations of ideal WEA interfaces into the record to facilitate discussion and review of alternatives to this model opt-out interface. We anticipate that requirements for subscriber opt-out choices would implicate changes to the *ATIS/TIA Mobile Device Behavior Specification* and to WEA application software. We seek comment on this analysis. In our consideration of whether to require a standardized WEA opt-out menu, should we make any particular accommodations for non-nationwide Participating CMS Providers (*e.g.,* small, regional, and rural providers)?

D. Improving WEA Transparency

1. Annual WEA Performance Reporting

84. The Commission's Part 10 WEA rules do not establish a procedure for Participating CMS Providers to report the results of any required tests to alert originators or to government entities. As such, there is no available method for analyzing the success of C-interface, Required Monthly, or State/Local WEA Tests. In the *WEA NPRM,* we sought comment on whether we should formalize a test reporting procedure for WEA and, if so, on the format and specific information that we should require Participating CMS Providers to report.

85. Hyper-Reach and the majority of public safety commenters support requiring Participating CMS Providers to report the extent of alert delivery latency, the accuracy of geo-targeting, and the availability and reliability of their WEA network because it would improve transparency and understanding of IPAWS/WEA among emergency managers, and because this transparency, in turn, could increase WEA adoption by non-participating emergency managers. CSRIC V states, for example, that ''confidence in WEA among [Alert Originators] is dampened by perceived unpredictability of WEA geo-targeting,'' and building confidence ''will require a means by which they can know that the polygon provided is what is actually delivered at the towers for distribution.'' Accordingly, CSRIC V recommends that ATIS and CTIA study methods of passively collecting and sharing data on the accuracy of geo-targeting with emergency management agencies. As demonstrated in Appendix G, NYCEM already independently generates performance reports on WEA geo-targeting, latency and reliability from actual Alert Messages issued in New York City. These tests demonstrate that some mobile devices in the target area do not receive WEA Alert Messages that are intended for them, and that some mobile devices do not receive Alert Messages intended for them until almost an hour after they are initially transmitted. APCO and Pinellas County EM urge the Commission to adopt reporting requirements specific enough to result in the production of uniform reports to emergency management agencies. While AT&T would support a requirement for Participating CMS Providers to report the results of RMTs, Sprint states that the kind of information we proposed to gather through test reporting (*i.e.,* the extent of geo-targeting and alert delivery latency) is not technically feasible to deliver.

Sprint and ATIS state that test reporting should be FEMA's responsibility.

86. We propose to amend Section 10.350 to require Participating CMS Providers to submit annual reports to the Commission that demonstrate the following system performance metrics for their nationwide WEA deployment (Annual WEA Performance Reports).

- *Geo-targeting.* The accuracy with which the Participating CMS Provider can distribute WEA Alert Messages to a geographic area specified by an alert originator.
- *Latency.* An end-to-end analysis of the amount of time that it takes for the Participating CMS Provider to transmit a WEA Alert Message.
- *Availability and Reliability.* The annual percentage of WEA Alert Messages that the Participating CMS Provider processes successfully, and a summary of the most common errors with Alert Message transmission.

We seek comment on these reporting elements and on the assessment methodologies Participating CMS Providers could use to produce Annual WEA Performance Reports below.

87. First, we seek comment on whether an annual requirement would achieve the right frequency of reporting. We reason that WEA performance data recorded over a period of one year would be sufficient to provide a statistically significant sample of data to inform Annual WEA Performance Reports. We seek comment on this rationale. We note that the record reflects concern that reporting requirements will ''result in an increased burden for carriers participating in the service on a voluntary basis,'' as well as concern that there is currently no method available to alert originators to verify system availability and reliability except anecdotally. Does our proposed approach strike the appropriate balance between these concerns? If not, we invite commenters to recommend alternative periodicities within which such reports should be required.

88. In the alternative, would a single performance report to become due on a date certain, rather than an annual requirement, suffice to inform emergency managers and the public about WEA's capabilities? What types of changes, if any, would be substantive enough to warrant additional reporting beyond the initial report? For example, as Participating CMS Providers make material upgrades to their networks to incorporate new or updated technologies (*e.g.,* 5G network technologies), would additional performance reporting be appropriate to demonstrate that WEA continues to satisfy its performance requirements, or to highlight the extent to which any system improvements may improve a Participating CMS Providers' WEA service? Would it be appropriate to adopt an alternative, less frequent reporting requirement for non-nationwide Participating CMS Providers?

89. We seek comment on the methodology by which Participating CMS Providers may develop Annual WEA Performance Reports. We anticipate that State/Local WEA Tests would be an effective method of collecting annual report data since they are test messages that may be used by state and local emergency managers to evaluate system readiness, and are required to be processed consistent with our Alert Message requirements. We seek comment on this analysis. Would a different classification of WEA Alert Message be more appropriate for use to collect performance data, be more likely to produce results that are representative of Alert Message delivery under actual emergency conditions, or be less burdensome to implement? For example, AT&T states that Participating CMS Providers' reporting obligations should be limited to RMTs. We observe that Section 10.350 does not require Participating CMS Providers to deliver RMTs to mobile devices, and allows RMTs to be distributed ''within 24 hours of receipt by the CMS Provider Gateway unless pre-empted by actual alert traffic or unable due to an unforeseen condition.'' Given these limitations, we seek comment on the value of RMTs as the basis for collecting Annual WEA Performance Report data. For example, could it be less burdensome and comparably effective for Participating CMS Providers to collect geo-targeting data from cell sites to which RMTs are delivered, as opposed to from mobile devices to which State/Local WEA Tests are delivered? To what extent could an analysis of the radio frequency propagation characteristics of the particular constellation of cell sites and cell sectors chosen to geo-target an RMT be used as an accurate proxy for the geographic area to which an Alert Message with the same target area would actually be delivered? Further, we seek comment on whether RMTs could provide meaningful data about alert delivery latency, given that Participating CMS Providers are allowed to delay up to 24 hours before retransmitting them. For example, would it be less burdensome and comparably effective to allow Participating CMS Providers to schedule performance analyses during times when network usage is light? Would it be feasible and desirable to ''pause the timer'' on any applicable latency measurement at the CMS Provider Alert Gateway until such a time within 24 hours as becomes convenient to distribute the test message? Would such an approach undermine the representativeness of the latency data collected because actual Alert Messages are not held for any period of time in order to await more ideal network conditions?

90. We seek comment on the specific data that Participating CMS Providers would be required to gather in order to complete statistically significant reports on the accuracy of WEA geo-targeting, the extent of alert delivery latency, and system availability and reliability. Would determining the accuracy of geo-targeting require either a measurement of the contours of the geographic area within which WEA-capable mobile devices receive the message, or an estimation of the radio frequency propagation contours of the cell broadcast facilities selected to geo-target the Alert Message? Would it require comparing the target area to the alert area? Would an average deviation from the target area be an adequate measure of the accuracy of geo-targeting, or would emergency managers benefit from a report on the specific percentage of instances in which a Participating CMS Provider is able to meet our geo-targeting standard? Further, we seek comment on whether there are WEA geo-targeting scenarios that pose particular challenges to Participating CMS Providers. If so, should Participating CMS Providers be required to collect, analyze and report on geo-targeting under those specific circumstances? In any case, should Participating CMS Providers be required to collect, analyze and report on their ability to geo-target Alert Messages to geocodes, circles, and polygons of varying complexities, and in varying geographic morphologies? How many samples of each type would be necessary to produce a statistically significant report on the accuracy of a Participating CMS Providers' WEA geo-targeting capability nationwide?

91. Further, we seek comment on the specific data points that Participating CMS Providers would be required to gather in order to measure alert delivery latency. Would it be satisfactory to simply measure the amount of time that elapses from the moment that an alert originator presses ''send'' using their alert origination software to the moment that the Alert Message is displayed on

the mobile device? Would this single measurement suffice to give an alert originator an informed perspective on when the public could reasonably be expected to receive an Alert Message that they may send in a time-sensitive crisis? Would it also provide sufficient insight into system functionality to allow us to diagnose and address specific causes of alert delivery latency? Alternatively, would it be advisable to collect latency data at points in addition to the time of initial transmission and the time of receipt on the mobile device? For example, would it be advisable to analyze time stamps for Alert Messages received and transmitted at each of the A–E interfaces that comprise the WEA system in order to diagnose specific causes of latency, and to promote sufficient transparency to facilitate Commission action in the public interest? We seek comment on whether there are any particular circumstances in which Alert Messages are delivered more slowly than others. If so, should Participating CMS Providers be required to collect, analyze and report on alert delivery latency under those specific circumstances? In any case, should Participating CMS Providers be required to collect, analyze and report on alert delivery latency in varying geographic morphologies? How many independent measurements would be necessary to produce a statistically significant report on the degree of alert delivery latency at each WEA interface?

92. Similarly, we seek comment on the specific data points that Participating CMS Providers would be required to collect in order to satisfactorily measure the regularity of system availability and reliability. Would the alert logging requirement that we adopt today suffice to determine the WEA system's rate of success at delivering Alert Messages? Where do errors with Alert Message transmission tend to occur? If at junctures other than the C-interface, does this militate for the collection of system availability data at each interface in the alert distribution chain in addition to the CMS Provider Alert Gateway? If less than 100 percent of WEA-capable mobile devices in the target area receive a WEA message intended for them, would this implicate shortcomings in system availability or reliability? If so, should Participating CMS Providers also be required to collect data on the percentage of WEA-capable mobile devices for which an Alert Message is intended that actually receive it, and to report this data to the Commission as a fundamental aspect of system availability and performance? Would this more nuanced approach be necessary in order to allow Participating CMS Providers to diagnose and correct any issues in alert distribution that may arise, and to promote sufficient transparency to facilitate Commission action in the public interest? Would an average measure of the rate of system availability be sufficient to grow emergency managers' confidence that the system will work as intended when needed, or do emergency managers require more granular data? Would it be necessary for Participating CMS Providers to log and report the CMAC attributes of each Alert Message at each of the C–E interfaces in order to establish whether the WEA system is able to deliver Alert Messages with ''five nines'' of reliability (*i.e.,* to establish whether 99.999 percent of WEA Alert Messages are delivered successfully)? Is this an appropriate standard of reliability for the WEA system? If not, why not?

93. We seek comment on whether emergency managers need any additional information beyond the accuracy of geo-targeting, the extent of alert delivery latency, and the regularity of system availability and reliability in order to understand the strengths and weaknesses of WEA as an alert origination tool. What, if any, additional data could Participating CMS Providers collect without incurring additional cost burdens, if we were to require them to collect each of the aforementioned data points? In the alternative, we seek comment on whether, and if so, to what extent making alert logs available upon emergency management agencies' request could satisfy their need for this information. Further, in addition to the possibility of requiring performance reports less frequently from non-nationwide Participating CMS Providers, we seek comment on whether such Participating CMS Providers should also be allowed to collect less granular data on system performance in order to reduce any cost burdens entailed by these proposed recordkeeping and reporting requirements.

94. We seek comment on whether we should defer to Participating CMS Providers regarding how they collect annual report data. Does such an approach provide Participating CMS Providers with increased flexibility that will reduce the burdens of these recordkeeping and reporting requirements? Would this approach only be appropriate for non-nationwide Participating CMS Providers? We seek comment on whether one effective and efficient method of generating national data for annual submission to the Commission might be through the use of a representative sample of the different real world environments in which the WEA system would be used (*e.g.,* the dense urban, urban, suburban and rural morphologies defined by the ATIS–0500011 standard). We anticipate that the use of a representative sample of geographic morphologies could reduce any burdens that may be associated with providing Annual WEA Performance Reports by allowing Participating CMS Providers to collect less data. We seek comment on this analysis.

95. In the alternative, we seek comment on whether our State/Local WEA Testing model provides a framework to emergency managers that is sufficient to enable them to collect localized geo-targeting, latency, and system availability data without requiring additional involvement from Participating CMS Providers. We observe that, even in the absence of State/Local WEA Tests, NYCEM deployed a network of volunteers using mobile device offered by an assortment of Participating CMS Providers to collect data on WEA geo-targeting and latency in New York City. We applaud NYCEM for their voluntary effort to improve awareness about WEA system performance. We seek comment on whether such tests demonstrate that it would be feasible for any emergency management agency that wishes to gather performance statistics about WEA to do so for themselves. We seek comment on whether NYCEM's tests were able to produce statistically significant results, and if not, we seek comment on whether emergency managers would be willing to voluntarily collaborate and share test results with one another such that their findings could be aggregated into a statistically significant sample size.

96. We propose to treat Annual WEA Performance Reports submitted to the Commission as presumptively confidential, as we have reports in the E911, Emergency Alert System (EAS), and Network Outage Reporting System (NORS) contexts. Similarly, we propose to require that Participating CMS Providers grant emergency management agencies' requests for locality-specific versions of these performance metrics if and only if the requesting entity agrees to provide confidentiality protection at least equal to that provided by FOIA. Would the production of the proposed performance metrics require Participating CMS Providers to disclose information that they consider to be proprietary? Would offering such aspects of Annual WEA Performance Reports presumptively confidential treatment and only requiring that that

Participating CMS Providers share them with entities that agree to provide confidentiality protection at least equal to that provided by FOIA ameliorate any concerns about the disclosure of potentially sensitive competitive information? Further, we seek comment on steps that Participating CMS Providers can take to protect consumer privacy if producing reliable performance data requires information to be extracted from end user mobile devices. We observe that we are not requesting data at the end user/mobile device level, and therefore assume that any such information would be aggregated or, at a minimum, de-identified.

97. We anticipate that requiring Annual WEA Performance Reports would be likely to benefit emergency managers and the public. For example, we agree with Jefferson Parish EM that performance reports would help to improve system transparency with respect to ''how long it took for the alert to reach the public,'' whether there was ''under alerting or overlap of the alerts,'' and how often there are network conditions in which ''Emergency Managers . . . could not send alerts.'' We also agree with NYCEM that ''[a]s with any other mission-critical system, mobile service providers should be required to capture and report system errors'' in order to improve the system's security posture. Further, FEMA and other commenting emergency management agencies agree that reporting geo-targeting, latency and system availability and reliability data could provide a compelling demonstration of WEA's capacity to deliver timely, geo-targeted Alert Messages to specific areas and localities on a national scale, which could potentially increase WEA adoption by non-participating emergency managers who are ''reluctant to activate WEA'' without demonstrations of ''coverage and delivery latency within their jurisdiction.'' We seek comment on this assessment. We also seek comment on whether the greater transparency promoted by Annual WEA Performance Reports would better support alert originator and emergency operations center response planning. At the same time, we anticipate that regular performance reporting requirements may also be useful to us in our efforts to bring to light and address potential areas for improvement in the WEA system nationwide. Regardless, we seek comment on whether increases in system transparency created by Annual WEA Performance Reports would be likely to improve our ability to act in the public interest to remediate any issues that the reports may reveal. We seek comment on our analysis of these potential benefits, and on any other benefits that Annual WEA Performance Reports may provide.

2. Alert Logging Standards and Implementation

98. As discussed above, we require Participating CMS Providers to log their receipt of Alert Messages at their Alert Gateway and to appropriately maintain those records for review. We now seek comment on whether and, if so, how to create a uniform format for alert logging, and on how the collection of more detailed system integrity data could be integrated into Annual WEA Performance Reports. We seek comment on the extent to which emergency managers would benefit from standardization of the format of Participating CMS Providers' alert logs. Emergency managers confirm that there is value in log keeping by Participating CMS Providers, but CMS Providers confirm there is significant variation among them with respect to log keeping. Absent standardization of alert logging capabilities, would emergency managers be forced to contend with this variation in a manner that may significantly decrease the value of alert logs? Does this support the value proposition of a uniform standard consistently applied to Participating CMS Providers' log keeping? Would the creation of a uniform format require the modification of standards relevant to Alert Gateway functionality? Would updates to Alert Gateway software also be required?

99. We also seek comment on whether the logging requirements we adopt today should extend beyond the CMS Provider Alert Gateway to the RAN and to WEA-capable mobile devices in furtherance of our goal of improving WEA transparency. We anticipate that alert logging beyond the Alert Gateway will continue to improve the transparency of the WEA system, will contribute to emergency managers' confidence that the system will work as intended when needed, and will improve our ability to detect and remediate any latent issues. We seek comment on this analysis. Will requiring Participating CMS Providers to log error reports and the CMAC attributes of Alert Messages at the CMS Provider Alert Gateway, as we do today, be sufficient to safeguard the integrity of WEA? If not, would it be advisable to require that Participating CMS Providers log this information at each of the C–E interfaces? We also seek comment on whether data other than, or in addition to error reports and CMAC attributes can be utilized as indicia of system integrity. Do Participating CMS Providers currently safeguard WEA system integrity through mechanisms other than, or in addition to alert logging? Further, we seek comment on whether requiring Participating CMS Providers to log data relevant to the accuracy of geo-targeting, the extent of alert delivery latency, and the system availability and reliability could contribute to the collection of data for Annual WEA Performance Reports? For example, if we were to require Participating CMS Providers to log alert receipt and transmission time stamps at each of the C–E interfaces, would that data contribute to their ability to report on specific sources of alert delivery latency?

E. Compliance Timeframes

100. The rules we propose in this *FNPRM* would leverage commercially available technologies to improve public safety. In this regard, we take notice of the current state of technology, and propose timeframes that are informed by the processes and procedures that Participating CMS Providers and mobile device manufacturers state are necessary to implement changes to their WEA service. For ease of reference, the table below sets forth proposed timeframes for compliance with our proposed rules. We also seek comment on timeframes within which we could reasonably expect Participating CMS Providers to reach other policy objectives we discuss in this *FNPRM.*

FIGURE 4—PROPOSED COMPLIANCE TIMEFRAMES

Rule amendment	Compliance timeframe
Defining the Modes of Participation in WEA	*Within 120 days of the rules' publication in the* ***Federal Register****.*
Infrastructure Functionality	*Within 30 days of the rule's publication in the* ***Federal Register****.*
Alert Message Preservation	*Within 30 months of the rule's publication in the* ***Federal Register****.*
Earthquake Alerting	*Within 30 months of the rules' publication in the* ***Federal Register****.*
Multimedia Alerting	*Within 30 months of the rules' publication in the* ***Federal Register****.*

FIGURE 4—PROPOSED COMPLIANCE TIMEFRAMES—Continued

Rule amendment	Compliance timeframe
Multilingual Alerting	*We seek comment on reasonable timelines for Participating CMS Providers to support the transmission of WEA Alert Messages in various languages.*
Matching the Geographic Target Area	*Within 42 months of the rules' publication in the **Federal Register**, or within 24 months of the completion of all relevant standards, whichever is sooner.*
Promoting Informed Consumer Choice at the Point of Sale	*Within 120 days of the rules' publication in the **Federal Register**.*
Promoting Informed Consumer Choice through the WEA Interface	*Within 30 months of the rules' publication in the **Federal Register**.*
Annual WEA Performance Reporting	*Within 30 months of publication in the **Federal Register** of a notice announcing the approval by the Office of Management and Budget of the modified information collection requirements.*
Alert Logging	*We seek comment on reasonable timeframes for Participating CMS Providers to improve their tracking of system performance through alert logging.*

101. We propose a 30-month compliance timeframe for each proposed rule where compliance would be expected to require updates to standards and system specifications, as well as software updates for various components of the WEA system. These proposals include requiring Participating CMS Providers make changes to the WEA interface to promote informed consumer choice, requiring them to expedite delivery of earthquake-related Alert Messages, requiring them to provide a method of accessing pending Alert Messages, requiring support for multimedia content in Public Safety Messages, and requiring them to track and report on critical system performance metrics. We seek comment on this approach and analysis. In the *Report and Order,* we concluded that 30 months was an appropriate timeframe within which to require Participating CMS Providers to comply with rules that required updates to software and standards because it takes twelve months for appropriate industry bodies to finalize and publish relevant standards, another twelve months for Participating CMS Providers and mobile device manufacturers to develop and integrate software upgrades consistent with those standards into embedded plant and to complete required ''technical acceptance testing,'' and then six more months for Participating CMS Providers and mobile device manufacturers to deploy this new technology to the field. We seek comment on whether, unlike changes to WEA Alert Message content we adopt in the *Report and Order,* our WEA interface and Alert Message preservation proposals will likely only require changes to WEA-capable mobile devices, not Participating CMS Providers' networks. If so, would mobile device manufacturers be able to integrate these enhanced capabilities into their mobile devices on a faster timeline than we allow for compliance with rules that implicate more systemic changes?

102. With respect to our proposal to require Participating CMS Providers to produce and share critical system performance metrics, we anticipate that compliance would require updates to software and standards, as well as the coordinated efforts of professionals employed by Participating CMS Providers in order to design and implement appropriate data collection and sharing mechanisms. We seek comment on this reasoning. We seek comment whether compliance with this proposal would require updates to software and standards akin to those required by rules we adopt in the *Report and Order,* and, relatedly, on whether we could reasonably expect Participating CMS Providers to complete these updates within thirty months. We anticipate that some portion of the design planning required to determine the types of data and data collection methodologies appropriate for this task will take place during the course of this proceeding as industry stakeholders consider what compliance with our proposal would require of them. We also anticipate that this work could continue in parallel with the development of appropriate standards that describe this data collection task. Accordingly, we do not anticipate that any unique project planning component of this proposal will militate for allowing Participating CMS Providers additional time within which to comply, but we seek comment on this analysis. We also propose to provide Participating CMS Providers with a period of one year from the date of required compliance to produce their first annual WEA performance report (*i.e.,* within 42 months of publication in the **Federal Register** of a notice announcing the approval by the Office of Management and Budget of the modified information collection requirements). We anticipate that one year will be sufficient for Participating CMS Providers to schedule any required data collections, and to aggregate that data into useful reports. We seek comment on this analysis.

103. We propose to require Participating CMS Providers to match the target area specified by alert originators within 42 months of the rules' publication in the **Federal Register**, or within 24 months of the completion of all relevant standards, whichever is sooner. This is consistent with CSRIC V's recommendations that we allow 18 months for the development of standards ''in consideration of device compatibility, potential privacy issues, network congestion and consumer impacts due to increased data plan usage,'' and that ''[o]nce the standards work is complete, full system deployment including new handsets should be deployed within no more than 24 months.'' We seek comment on this proposal. We also seek comment on whether and how this timeframe could be expedited, given the critical public need to employ more precise geo-targeting standards. Rather than adopting a single implementation timeframe, should we benchmark compliance timeframes based on a percentage of Alert Messages that meet the standard (*e.g.,* 40 percent of Alert Messages within two years, 80 percent of Alert Messages within six years)? Could this approach enable compliance for a percentage of Alert Messages in a shorter timeframe by enabling Participating CMS Providers to implement improvements to geo-targeting by facilitating implementation on a rolling basis and without waiting for industry standardization? We note that Participating CMS Providers voluntarily improved geo-targeting relative to our foregoing county-level

requirement without industry standardization. We seek comment on why standards would be necessary to support a ''matching'' requirement where they do not seem to have been needed to support a ''best approximate'' requirement. Further, CSRIC V finds that Participating CMS Providers would need 36–48 months to support nesting polygons, where 18–24 months is allocated to the modification of appropriate standards, and 18–24 months is allocated for development and implementation in Participating CMS Providers' networks. We seek comment on this analysis. Why would enabling geo-targeting to nesting polygons require more time than the record shows is necessary to modify standards and software to support rules we adopt today? We seek comment on a reasonable timeframe within which to integrate additional network-based technologies, such as small cells, into the WEA infrastructure in order to achieve incremental improvements to WEA geo-targeting. Could such an integration take place within a shorter timeframe that that which we may allow for the integration of eMBMS or another ulterior technology into WEA because the network components that we consider above are already integrated into Participating CMS Providers 4G–LTE networks?

104. We propose to require compliance with our proposed point-of-sale notification requirements, and with our new definitions of the modes of participation in WEA insofar as they necessitate a renewed obligation to file election letters within 120 days of the rule's publication in the **Federal Register**. We anticipate that compliance with these proposed rules would require time and effort on the part of attorneys and communications professionals employed by Participating CMS Providers in order to update any required point-of-sale notifications, and potentially to update Participating CMS Providers' election letters on file with the Commission. We seek comment on this analysis, and relatedly, we seek comment on whether 120 days would be a sufficient period of time within which to expect Participating CMS Providers to complete this task. We observe that in the *Ensuring the Continuity of 911 Communications Report and Order,* the record supported allowing Participating CMS Providers 120 days to update their point-of-sale notification to advise consumers of the availability of a backup power solution that provides 911 access during a commercial power loss. We seek comment on whether 120 days would also be adequate in this context, and if not, we invite commenters to provide specific details as to how our proposal presents unique challenges. We also seek comment on whether we could reasonably expect Participating CMS Providers to file any required update to their election letter within this 120-day timeframe, noting that in the *WEA Third Report and Order,* we required CMS Providers to file their election letter within 30 days.

105. We propose to require compliance with our WEA infrastructure functionality proposal within 30 days of the rules' publication in the **Federal Register**. We do not anticipate that Participating CMS Providers would need to take any action to achieve compliance with this proposed rule, if adopted, because, as we reason above, Participating CMS Providers do not rely on the language we propose to remove. We seek comment this analysis. If the deletion of this language would require CMS Providers otherwise in compliance with our Part 10 rules to take action in order to continue to participate, what specific steps would be necessary to comply with these rules as revised? How much time would those steps take to complete? If any Participating CMS Provider were to fall within this category, would it likely be a non-nationwide Participating CMS Provider? If so, would it be appropriate to make any special accommodations for non-nationwide Participating CMS Providers to facilitate their continued participation?

106. We also seek comment on reasonable timeframes in which to expect Participating CMS Providers to be able to reach the other policy objectives that we discuss above, including developing a uniform standard for alert log formatting and developing additional alert logging capabilities throughout the WEA system and deepening WEA's language support capabilities. With respect to alert logging, we seek comment on whether one year would be sufficient for industry to complete a standard to describe a uniform alert log format that will facilitate comparison of Participating CMS Providers' WEA services, as we concluded would be appropriate for standards necessitated by rules we adopt in the *Report and Order.* We also seek comment on whether 30 months would be an appropriate period of time within which to require logging at additional junctures in the WEA system. Would software updates be required to implement this change?

107. We seek comment on a reasonable timeframe within which to require Participating CMS Providers to support transmission of Alert Messages in languages in addition to English and Spanish. Could standards appropriate to support additional languages in WEA, including ideographic languages, be completed or otherwise integrated into WEA within one year, consistent with our reasoning about the time that it takes to complete standards in the *Report and Order.* We seek comment on whether software would need to be updated in order to support additional languages as well given the two-year timeframe that we allow Participating CMS Providers to update software to support a language in addition to English (*i.e.,* Spanish) in the *Report and Order.* Would it be possible for Participating CMS Providers to bundle software upgrades enabling support for additional languages into any software upgrades that they may undertake in order to comply with our Spanish-language requirement? If not, why not?

108. Finally, we seek comment on a reasonable implementation timeframe for our proposal to prioritize earthquake-related Alert Messages at the Participating CMS Provider Alert Gateway. Would Participating CMS Providers be able to implement this change on the same 30-month timeframe that we allow for other proposals anticipated to necessitate changes to software and standards? Could any changes to the prioritization of earthquake-related Alert Messages in transit be completed within the same timeframe? If not, what additional considerations should we take into account in our analysis of what changes in Alert Message prioritization in transit will require? We seek to implement each of our proposed rules in as swift of a timeframe as possible, while ensuring that our proposed rules do not pose undue burdens for Participating CMS Providers, recognizing the current state and technology. We invite commenters to offer into the record any additional considerations relevant to compliance with our proposed rules.

III. Ordering Clauses

109. Accordingly, *it is ordered,* pursuant to Sections 1, 2, 4(i), 4(o), 301, 303(r), 303(v), 307, 309, 335, 403, 624(g), 706, and 715 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(o), 301, 301(r), 303(v), 307, 309, 335, 403, 544(g), 606, and 615, as well as by sections 602(a), (b), (c), (f), 603, 604 and 606 of the WARN Act, 47 U.S.C. 1202(a), (b), (c), (f), 1203, 1204 and 1206, that the *WEA Report and Order and Further Notice of Proposed*

Rulemaking in PS Docket Nos. 15–91 and 15–94 *is hereby adopted.*

110. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the *WEA Report and Order and Further Notice of Proposed Rulemaking,* including the Final and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of the Managing Director.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

[Docket No. FWS–R7–ES–2016–0056; FF07CAMM00–FX–F R133707PB000]

RIN 1018–BA66

Co-Management of Subsistence Use of Polar Bears by Alaska Natives; Conservation of the Alaska-Chukotka Polar Bear Population

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Advance notice of proposed rulemaking; solicitation of comments.

SUMMARY: The U.S. Fish and Wildlife Service (Service) is authorized to issue regulations to facilitate the implementation of the sustainable harvest management obligations under the *Agreement between the Government of the United States of America and the Government of the Russian Federation on the Conservation and Management of the Alaska-Chukotka Polar Bear Population* (U.S.-Russia Agreement). To that end, the Service is soliciting public comment on the development of a regulatory program and local management structures for carrying out the responsibilities under the U.S.-Russia Agreement and title V of the Marine Mammal Protection Act of 1972, as amended. The Service is also interested in entering into a cooperative agreement with an Alaska Native Organization for the purposes of involving subsistence users in conservation and management of polar bears in Alaska, including the creation of effective two-way communication pathways; collecting and exchanging local observations on polar bears for the development of sound management practices for polar bears in Alaska; managing and monitoring the harvest of polar bears for subsistence use; and developing a polar bear co-management structure.

DATES: We will accept comments received or postmarked by the end of the day on January 9, 2017.

ADDRESSES: *Comment submission:* You may submit comments by one of the following methods:

- *U.S. mail or hand-delivery:* Public Comments Processing, ATTN: FWS–R7–ES–2016–0056, U.S. Fish and Wildlife Service Headquarters, MS: BPHC, 5275 Leesburg Pike, Falls Church, Virginia 22041–3803.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments to Docket No. FWS–R7–ES–2016–0056.

FOR FURTHER INFORMATION CONTACT: Hilary Cooley, Polar Bear Project Leader, U.S. Fish and Wildlife Service, Marine Mammals Management Office, 1011 East Tudor Road, Anchorage, Alaska 99503; by telephone (907) 786–3800; or by facsimile (907) 786–3816. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION: One of the purposes of this advance notice of proposed rulemaking (ANPR) is to solicit public comments on developing and administering a co-management framework to manage the subsistence use of polar bears in Alaska. This effort would include implementation of the sustainable harvest management obligations of the *Agreement between the Government of the United States of America and the Government of the Russian Federation on the Conservation and Management of the Alaska-Chukotka Polar Bear Population* (U.S.-Russia Agreement) as implemented under title V of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*). Activities under a cooperative agreement could include the following: collaborating to collect information on the distribution, abundance, and health of polar bears; managing human and polar bear conflicts; assessing and protecting important habitats; and monitoring and managing subsistence harvest. We are also soliciting preliminary ideas about the content of regulations to facilitate implementation of harvest regulations for polar bears in the Alaska-Chukotka population in accordance with our obligations under the U.S.-Russia Agreement.

Background

As previously mentioned, the U.S.-Russia Agreement is implemented in the United States through title V of the MMPA. Congress passed the MMPA in 1972 to prevent marine mammal species and population stocks from declining beyond the point at which they ceased to be significant functioning elements in the ecosystems of which they are a part. The MMPA prohibits, with certain exceptions and exemptions, the take of marine mammals. Prior to enactment of title V of the MMPA and ratification of the U.S.-Russia Agreement, section 101(b) of the MMPA governed the take of polar bears from the Alaska-Chukotka population, providing a general exemption for the taking of all marine mammals by any Indian, Aleut, or Eskimo who lives in Alaska and who dwells on the coast of the North Pacific Ocean or the Arctic Ocean if such taking is for subsistence purposes or for the purpose of creating and selling authentic native articles of handicraft and clothing, provided that the taking is not accomplished in a wasteful manner. Under MMPA section 101(b), if the Secretary determines any species or stock of marine mammal subject to taking by Indians, Aleuts, or Eskimos is depleted, the taking may be regulated.

The MMPA also recognizes the intrinsic role that marine mammals have played and continue to play in the subsistence, cultural, and economic lives of Alaska Natives. The Service, in turn, recognizes the important role that Alaska Natives can play in the conservation of marine mammals such as the polar bear. Amendments to the MMPA in 1994 acknowledged this role by authorizing the Service to enter into cooperative agreements with Alaska Natives for the conservation and co-management of subsistence use of marine mammals (16 U.S.C. 1388).

Upon enactment of title V of the MMPA and ratification of the U.S.-Russia Agreement in 2007, the MMPA's Alaskan Native exemption under section 101(b) no longer applied with respect to take from the Alaska-Chukotka population of polar bears (16 U.S.C. 1423g). The U.S.-Russia Agreement and title V of the MMPA continues to allow consumptive use of polar bears for subsistence purposes or the creation of authentic native handicrafts and clothing by Alaskan natives, but subjects that use to a number of restrictions, including those adopted by the U.S.-Russia Polar Bear Commission (Commission), the bilateral authority established under the U.S.-Russia Agreement.

The 2007 amendments to the MMPA also identified the Alaska Nanuuq Commission (ANC), and any successor entity, as the Alaska Native entity that represents all villages in the State of Alaska that engage in the annual subsistence taking of polar bears from the Alaska-Chukotka population. The ANC was established in 1995 to represent the interests of subsistence users and polar bear hunters on issues relating to the subsistence harvest of polar bears in Alaska. The 2007 amendments to the MMPA allow for the Service to share authority for the management of the taking of polar bears from the Alaska-Chukotka population for subsistence purposes with the ANC, or a successor entity, provided certain criteria are met, including: Entering into a cooperative agreement with the Secretary of the Interior (Secretary) under section 119 for the conservation of bears; meaningfully monitoring compliance with title V and the U.S.-Russia Agreement by Alaska Native people; and administering a co-management program for polar bears in accordance with title V and the U.S.-Russia Agreement.

In 2008, the Service listed polar bears as a threatened species worldwide under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) due to range-wide declines in sea ice. A threatened species is any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Critical habitat has also been designated for polar bears in the United States. In addition, under section 4(d) of the ESA, the Secretary has discretion to issue such regulations as she deems necessary and advisable to provide for the conservation of threatened species. The Service determined that a section 4(d) rule was appropriate for polar bears and issued one that adopts the existing conservation regulatory requirements under the MMPA and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES; 27 U.S.T. 1087) as the primary regulatory provisions for the polar bear. The Service has been working with a diverse team to develop a Conservation Management Plan for polar bears, and the final version is expected to be released by the end of the calendar year. Because polar bears are listed under the ESA, they are considered depleted under the MMPA.

In addition to the national legislation just discussed, polar bear management in the United States is guided by multi- and bilateral agreements. In 1973 the Governments of Canada, Denmark (on behalf of Greenland), Norway, the Soviet Union, and the United States entered into the *Agreement on the Conservation of Polar Bears* (Range States Agreement). In entering into the Range States Agreement, the Parties acknowledged that additional protection was required for polar bears and that it was best achieved through coordinated measures. Parties to the Range States Agreement have committed to protect the ecosystems of which polar bears are a part and to manage polar bear populations in accordance with sound conservation practices based on the best available scientific data. Parties agreed that polar bears could be taken for scientific purposes, for conservation purposes, to prevent serious disturbance of the management of other living resources, by local people using traditional methods in the exercise of their traditional rights, or wherever polar bears have or might have been subject to taking by traditional means. Under the Range States Agreement, a Circumpolar Action Plan was adopted in 2015 that includes a number of management and research efforts to further the conservation of the species.

In 1988, the Inuvialuit-Inupiat Polar Bear Management Agreement in the Southern Beaufort Sea was signed by the Inuvialuit Game Council and the North Slope Borough Fish and Game Committee (I–I Agreement). The I–I Agreement noted that the Inupiat of the United States and the Inuvialuit of Canada have traditionally harvested a portion of polar bears from the same population in the southern Beaufort Sea and recognized that the maintenance of a sustained harvest for traditional users in perpetuity requires that the number of polar bears taken annually not exceed the productivity of the population. Objectives of the I–I Agreement include maintaining a healthy viable population of polar bears in the southern Beaufort Sea and managing polar bears on a sustained-yield basis in accordance with all the best information available. The I–I Agreement provides protection to denning bears and family groups and establishes a process for determining an annual sustainable harvest.

Current Polar Bear Management

In 2000, the Government of the United States and the Government of the Russian Federation signed the U.S.-Russia Agreement. The U.S.-Russia Agreement pledges cooperation with the goal of ensuring the conservation of the Alaska-Chukotka polar bear population (ACPBP), conservation of its habitat, and the regulation of its use for subsistence purposes by native people. It prohibits the taking of polar bears from this population inconsistent with the terms of the U.S.-Russia Agreement or the Range States Agreement.

The U.S.-Russia Agreement entered into force on September 23, 2007. The U.S.-Russia Agreement, among other things, provides legal protections for the ACPBP, found in the Chukchi-Northern Bering Sea. The U.S.-Russia Agreement is implemented in the United States through title V of the MMPA and builds upon those protections provided to polar bears through the 1973 Range States Agreement. The U.S.-Russia Agreement establishes a common legal, scientific, and administrative framework specifically for the conservation and management of the ACPBP shared between the United States and the Russian Federation. During the negotiation of the U.S.-Russia Agreement, it was recognized that continued availability of bears from the ACPBP for subsistence hunting in Alaska depended upon a coordinated management regime between the two countries. The negotiators, including those representing Alaskan Natives, determined that the best path forward was to replace the general subsistence take exemption contained in section 101(b) of the MMPA with the U.S.-Russia Agreement, which pledges coordinated management with the Russian Federation and provides for an equal role in management for government representatives and Native people in both Alaska and Russia.

Importantly, article 8 of the U.S.-Russia Agreement establishes the Commission, which is tasked with coordinating measures for the conservation and study of the ACPBP. The Commission includes a U.S. section and a Russian section, with each national section comprising two members; for the United States, there is one representative of the Federal Government and one representative of the Alaska Native interest. Under the U.S.-Russia Agreement, each section has one vote, and all decisions of the Commission may be made only with the approval of both sections. Consequently, the U.S. Native representative has an integral role in Commission actions and must be knowledgeable of, or have expertise in, polar bears. To date, although not required under title V of the MMPA, the U.S. Native Commissioner has been associated with the ANC, the recognized co-management entity, and through that entity, the Commissioner received input to help form positions with the U.S. Federal Commissioner.

As identified above, the Federal Government has responsibility for the management and conservation of polar

bears under a number of multi- and bilateral agreements and domestic laws and agreements. The Service has implemented its authorities in cooperation and collaboration with Alaskan Natives, to the extent allowable by law and regulation. We believe the active engagement and participation of Alaskan Natives is instrumental to successful implementation of our management actions, and we are committed to working to strengthen relationships to that end. We recognize that effective management of polar bears and human activities affecting polar bears and their habitat is greatly strengthened through the engagement, participation, and contribution of Alaskan Natives.

From 1997 to 2016, the Service has maintained cooperative agreements with the ANC. Through these cooperative agreements, the Service has worked to better understand the needs and interests of Alaska Native subsistence hunters and to exchange information on polar bears and their habitat. Since 2007, the Service's cooperative agreements with the ANC have focused on accomplishing polar bear conservation and implementing the U.S.-Russia Agreement.

The cooperative agreements between the Service and the ANC included a commitment to hold an annual meeting of the ANC. Commissioners from each of the 15 primary polar bear harvesting villages were appointed by their respective tribal governments to serve on the ANC Board. The cooperative agreements also included a requirement for coordination between the ANC Chairman and the ANC Commissioners to ensure: (1) That all Commissioners were fully informed of the taking limitation that will be implemented for the ACPBP; (2) that community concerns about conservation, management, and subsistence use of polar bears were shared with the ANC executive leadership with copies to the Service; and (3) that Commissioners attended local tribal government meetings, including those with the ANC leadership and Service employees, to present information on the polar bear harvest and other information about polar bear management and conservation and provide relevant reports from these meetings to the ANC executive leadership with copies to the Service.

Consistent with these agreements, the ANC was requested to assist in monitoring polar bear harvest in the local community by providing information to the hunters and community on progress of the harvest and, when appropriate, helping to ensure that Marking, Tagging, and Reporting Program (MTRP) taggers completed their tagging and reporting requirements. The MTRP, established pursuant to section 109(i) of the MMPA, requires hunters to present polar bear hides and skulls within 30 days of harvesting for tagging. The MTRP involves a network in 105 communities throughout Alaska and includes approximately 170 individuals hired as taggers. The ANC also committed to develop and implement steps to obtain authority from the tribal village governments to implement and enforce the annual taking limit under the U.S.-Russia Agreement and to develop a harvest monitoring system that included: Allocation procedures; reporting, tracking, and enforcement mechanisms; notification measures for providing real-time information on progress of harvest; and outreach and education materials.

At the second annual meeting of the Commission, which took place June 7–10, 2010, in Anchorage, Alaska (75 FR 65507, October 25, 2010), the Commissioners adopted an annual limit of polar bears that may be removed from the ACPBP of no more than 58 bears per year, of which no more than 19 may be females, to be divided evenly between the two nations. The Commission determined that all forms of human-caused removal of individuals from the ACPBP will be incorporated in this annual taking limit. The Commission, at each of its subsequent annual meetings held in 2011, 2012, 2013, 2014, and 2015, has maintained this take limit to ensure the continued harvest of polar bears remains sustainable (81 FR 3153, January 20, 2016). In 2012, the Commission adopted a multiyear quota system establishing a 5-year harvest level allowing annual adjustments to increase or decrease the taking limit depending on the harvest in the preceding year(s).

It is important to recognize that the subsistence harvest of polar bears is the primary way animals are removed from the population, but not the only way that humans take polar bears; all forms of removal are incorporated in the annual taking limit adopted by the Commission. For example, pursuant to article 6 of the U.S.-Russia Agreement, polar bears from the ACPBP may be taken when human life is threatened. Article 6 also authorizes the take of polar bears for scientific research and for the purpose of rescuing or rehabilitating injured polar bears, consistent with the Range States Agreement. Thus, in the course of the U.S. subsistence harvest season, which currently consists of the entire calendar year, the annual taking limit will need to be adjusted to account for subsistence harvest and other forms of removal, should they occur.

Of equal importance for Alaska Native polar bear hunters to understand is that the Commission adopted an annual taking limit in which no more than one-third of the overall limit may be female. Therefore, in the implementation of the annual taking limit, neither the limit on the total number of polar bears that may be removed from the population, nor the limit on the number of females that may be removed, can be exceeded.

Mechanisms for the Management of Polar Bears

The Service recognizes that federally enforced harvest limitations or closures for Alaska Native polar bear subsistence hunters have never been in place, and, therefore, we believe that the effectiveness of such measures is predicated on consultations and a collaborative co-management relationship with Alaska Natives and Tribal Governments. Such consultation is not only a crucial element of success, but also part of our responsibilities under the MMPA, and:

- The President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951);
- Executive Order 13175;
- Department of the Interior Secretarial Order 3225 of January 19, 2001 [Endangered Species Act and Subsistence Uses in Alaska (Supplement to Secretarial Order 3206)];
- Department of the Interior Secretarial Order 3317 of December 1, 2011 (Tribal Consultation and Policy);
- Department of the Interior Memorandum of January 18, 2001 (Alaska Government-to-Government Policy);
- the Department of the Interior's manual at 512 DM 2; and
- the Native American Policy of the U.S. Fish and Wildlife Service, January 20, 2016 (in the Service Manual at 510 FW 1).

In addition to working through and with our co-management partner, the ANC, the Service has conducted government-to-government consultations with tribal governments and held many informational meetings in villages and at other relevant forums and conferences. During these meetings, we have heard varying levels of awareness and satisfaction with the way the above duties assigned and agreed to by the ANC were implemented.

We have heard from Alaska Native tribal governments and stakeholders

that communication regarding the subsistence use of polar bears has been imperfect in the past, and we realize that effective communication is essential to success. With that in mind, we wish to ensure that our future co-management partner: Is capable of and committed to effectively facilitating communication between Alaska Native polar bear subsistence hunters and the Service; can ensure that Alaska Native tribal governments and their constituent members are fully informed of management plans, polar bear harvest regulation, and other relevant information about polar bear management and conservation; and effectively documents and communicates to the Service community concerns about polar bears and subsistence use. To do this, we anticipate an effective co-management partner will need to travel to Alaska Native villages, independently as well as with the Service, in order to facilitate full input by the Alaska Native community. Our co-management partner must also take steps to remain informed about the conservation, subsistence use, and co-management of polar bears, which may include participation in relevant local, state, national, and international meetings.

The ANC has been working towards developing details of a co-management plan for polar bears taken from the ACPBP. However, the Service has recently determined that we will not be able to continue to provide financial support for the ANC's operations, and it is thus unlikely that the ANC will be able to continue to serve as the representative of Alaska Native people for polar bear subsistence use, as defined in title V of the MMPA, as well as for Alaska Native polar bear hunters taking bears from the Southern Beaufort Sea population. We continue to believe that the activities included in previous agreements with the ANC are important, and we are interested in feedback as well as suggestions for improved delivery methods to increase effectiveness.

Co-Management Partnership To Represent Alaska Native Polar Bear Subsistence Hunters

The Service is seeking a co-management partner, as a successor entity to the ANC, that will provide the Commission with relevant information about the Chukchi Sea population in its deliberative process and serve as a co-management partner with the Service for managing the ACPBP in accordance with the U.S.-Russia Agreement. We also seek a partner to represent Alaska Native polar bear subsistence hunters who harvest polar bears from the Southern Beaufort Sea population, a population that is not regulated under the U.S.-Russia Agreement and title V of the MMPA. We are interested in Alaska Native input on the formation of a new co-management partner who is able to:

(1) Involve subsistence users in conservation and management of polar bears in Alaska, including the creation of effective two-way communication;

(2) Collect and exchange local observations on polar bears for the development of sound management practices for polar bears in Alaska;

(3) Develop a regional harvest management system in accordance with title V of the MMPA and the U.S.-Russia Agreement, including promulgation of local ordinances or regulations that restrict the taking of polar bears for subsistence purposes, allocation of a quota to Alaska Native subsistence hunters, monitoring Alaska Native subsistence harvest of polar bears, and, if necessary, enforcement by the co-management partner that complements Federal regulations; and

(4) Develop a polar bear co-management structure, which requires obtaining delegated governmental authority to represent, at a minimum, the 15 tribal governments in the State of Alaska that engage in the annual subsistence taking of polar bears from the Alaska-Chukotka population and the Southern Beaufort Sea population.

Thus, the appropriate Alaska Native Organization (ANO) would play an important role in informing positions of the United States at the Commission meetings. A committed and engaged partner is particularly important at this time given the commitments to implement the U.S.-Russia Agreement.

As noted above, we are also soliciting preliminary ideas about the content of regulations to facilitate implementation of harvest regulations for polar bears in the Alaska-Chukotka population. In order to ensure the annual taking limit established by the Commission is not exceeded, we believe it is necessary and appropriate to require more timely reporting, and we also need to ensure that hunters have effective notice of current information regarding the number and sex of bears that have been harvested relative to the annual taking limit. Therefore, we are seeking ideas and insights on: (1) The most effective ways to keep hunters informed of the number of bears available to harvest during the course of a season and when the annual taking limit has been met; and (2) the quickest and easiest ways for hunters to report their harvest.

Public Comments

We request comments and suggestions and encourage the submission of new ideas, materials, and recommendations from: The public; Alaska Native tribal governments, corporations, and organizations; environmental organizations; local, State, and Federal agencies; and any other interested party. Please ensure that the comments pertain only to the issues presented in this ANPR. You must submit your comments and supporting materials by one of the methods listed in **ADDRESSES**. If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. If you submit a hardcopy comment that includes personal identifying information, you may request that we withhold this information from public review, but we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *http://www.regulations.gov.* Comments and materials we receive will be available for public inspection at *http://www.regulations.gov,* or by appointment, during normal business hours, at the Service (see **FOR FURTHER INFORMATION CONTACT**).

We are interested in hearing from leaders and members of the Alaskan Native community, hunters, and tribal governments. We also welcome comments and information from Native Corporations, the State of Alaska, other governmental agencies, nongovernmental organizations, and members of the public. To be most useful, and most likely to inform decisions, comments should be specific, be substantive, explain the reasoning behind the comment, and address the issues outlined in this ANPR.

For the purposes of this ANPR, we are seeking input on the development and implementation of a co-management framework to manage subsistence use of polar bears in Alaska, including the sustainable harvest management obligations of the U.S.-Russia Agreement as implemented under title V of the MMPA. We are also soliciting preliminary ideas about the content of regulations to facilitate implementation of harvest regulations for polar bears in the Alaska-Chukotka population. Because establishment and implementation of a co-management framework would not alter existing international obligations or national laws and regulations affecting polar bear management, including the U.S.-Russia Agreement, we are not seeking comments on those topics.

We are seeking comments on: (1) The appropriate activities and functions to be carried out by a co-management partner; (2) candidate organizations or entities to serve in the capacity of a co-management partner; (3) recommendations for improving the process for obtaining the input and engagement of Alaskan Natives in polar bear conservation and management; (4) recommendations for improving the exchange of information between the Federal Government and Alaskan Natives on polar bear conservation and management; and (5) methods and measures for effective implementation of polar bear harvest management, consistent with the obligations of the U.S.-Russia Agreement.

We are particularly interested in receiving comments on the following questions relating to the establishment and maintenance of a cooperative agreement with an ANO for polar bear conservation and management and the promulgation of regulations to monitor and manage the harvest of polar bears from the Alaska-Chukotka population:

1. Should the Service enter into a cooperative agreement with a new ANO for polar bear conservation and management?

2. What functions and roles should a polar bear co-management entity perform?

3. How should a polar bear co-management entity be formed?

4. Are there existing organizations or entities that are capable of and interested in serving in the role of the polar bear co-management entity?

5. What methods are most effective for the exchange of information between the Federal Government and Alaskan Natives?

6. Should harvest regulations for polar bears in the Alaska-Chukotka population be promulgated only at the Federal level or issued by the polar bear co-management entity and then adopted in Federal regulations?

7. What is the appropriate timing for reporting of harvested bears?

8. What is the most effective method for reporting of harvested bears in a timely manner?

Next Steps and Timing

For all of the reasons identified above, the Service is interested in identifying a co-management partner in the immediate future so that we can ensure the effective engagement of Alaskan Natives in the many ongoing and time-critical polar bear management and conservation actions. It is our goal to have a co-management partner in place in 2017 so that they can proceed with securing the necessary authorizations from tribal governments and, assuming that option is preferred, establish a program of locally enforceable ordinances for polar bear harvest from the ACPBP. Further, as discussed above, the U.S.-Russia Agreement is in effect, including the annual taking limit established by the Commission, and we have an obligation to take actions necessary for its implementation. Thus, one management option being considered by the Service is, in the absence of ordinances adopted by the ANC or its successor by which Federal regulations would be based, to proceed with promulgation of regulations at only the Federal level.

Authority: We issue this ANPR under the authority of title V of the MMPA (16 U.S.C. 1423 *et seq.*).

Dated: October 25, 2016.

Daniel M. Ashe,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2016–26881 Filed 11–7–16; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register

Vol. 81, No. 216

Tuesday, November 8, 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

Submission for OMB Review; Comment Request

November 3, 2016.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by December 8, 2016 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Child and Adult Care Food Program (CACFP) Family Day Care Homes Meal Claims Feasibility Study.

OMB Control Number: 0584–NEW.

Summary of Collection: To comply with the Improper Payments Elimination and Recovery Act (IPERA) of 2010 and the Improper Payments Elimination and Recovery Improvement Act of 2012 (IPERIA), the Food and Nutrition Service (FNS) needs a reliable methodology to estimate erroneous payments for provider meal claims in the CACFP. The objective of this feasibility study is to design and test a data collection method that enables FNS to estimate erroneous payments due to meals claimed improperly by family day care home providers participating in the CACFP. Specifically, the study focuses on accurately estimating meals that are claimed but not served.

Need and Use of the Information: This study will collect real-time attendance and meal-serving information from participating providers and parents. FNS will use this data to identify and test a data collection method that will accurately estimate erroneous payments due to meals that are claimed improperly by FDCHs participating in the CACFP. FNS needs to collect this information to accurately estimate errors in meal claims in order to fulfill the requirements under the IPERA and the IPERIA to identify and reduce erroneous payments in the CACFP.

Description of Respondents: Individuals or households, Not-for profit institutions, and State, Local, or Tribal Government.

Number of Respondents: 1,038.

Frequency of Responses: Reporting: Other (two times a day for four weeks).

Total Burden Hours: 3,285.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2016–26910 Filed 11–7–16; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Office of Human Resources Management; 5 U.S.C. 4314(c)(4); Performance Review Board Membership

AGENCY: Office of Human Resources Management, Departmental Management, USDA.

ACTION: Notice of Performance Review Board Appointments.

SUMMARY: This notice announces the members of the Senior Executive Service and Senior Level and Scientific or Professional Performance Review Boards (PRB), as required by 5 U.S.C. 4314(c)(4). Agriculture has six PRBs: the Office of the Secretary; Departmental Management and Staff Offices; Marketing and Regulatory Programs and Food Safety; Farm and Foreign Agricultural Services; Food, Nutrition and Consumer Services; and Rural Development; Natural Resources and Environment; and Research, Education and Economics. Each PRB is comprised of a Chairperson and a mix of career and noncareer senior executives that meet annually to review and evaluate performance appraisal documents and provide a written recommendation to the Secretary for final approval of each executive's performance rating, performance-based pay adjustment, and performance award.

FOR FURTHER INFORMATION CONTACT: Roberta Jeanquart, Director, Office of Human Resources Management, telephone: (202) 260–8718, or Patricia Moore, Director, Executive Resources Management Division, telephone: (202) 720–8629.

DATES: Effective October 6, 2016.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the USDA PRB members are named below:

Office of the Secretary

Bumbary-Langston, Inga P.; Cordova, Elvis; Moore, Patricia L.; Oden, Bianca M.; and Shorter, Malcom.

Departmental Management and Staff Offices

Abebe, Yeshimebet M.A.; Alboum, Jonathan; Dean, Telora T.; Holladay, Jon M.; Johansson, Robert C.; Leonard, Joe E.; Prieto, Jeffrey M.; and Young, Michael L.

Marketing and Regulatory Programs and Food Safety

Almanza, Alfred V.; Coale, Dana H.; Keith, Susan; Mitchell, Lawrence W.; Ricci, Carrie F.; and Shea, Anthony K.

Farm and Foreign Agricultural Services; Food, Nutrition and Consumer Services; and Rural Development

Beyerhelm, Christopher P.; Christensen, Thomas W.; Glendenning, Roger W.; Quick, Bryce R.; Jackson, Yvette S.; Salerno, Lillian E.; and Wilson, Kathryn T.

Natural Resources and Environment

Bonnie, Robert F.; Berns-Melhus, Kim M.; Rodriguez-Franco, Carlos; and Hamer Jr., Hubert.

Research, Education and Economics

Bartuska, Ann M.; Bohman, Mary E.; Hamer Jr., Hubert; Jacobs-Young, Chavonda J.; Ramaswamy, Sonny; and Smith, David W.

Dated: October 31, 2016.

Thomas J. Vilsack,

Secretary.

[FR Doc. 2016–26938 Filed 11–7–16; 8:45 am]

BILLING CODE 3410–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2016–0067]

Notice of Request for Approval of an Information Collection; Importation of Fresh Citrus Fruit From Uruguay, Including Citrus Hybrids and Fortunella spp., Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request approval of an information collection associated with the regulations for the importation of fresh citrus fruit from Uruguay, including *Citrus* hybrids and *Fortunella* spp., into the continental United States.

DATES: We will consider all comments that we receive on or before January 9, 2017.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2016-0067.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2016–0067, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2016-0067* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the regulations for the importation of fresh citrus fruit from Uruguay into the continental United States, contact Dr. Nicole Russo, Director, Imports, Regulations, and Manuals, PHP, PPQ, APHIS, 4700 River Road Unit 156, Riverdale, MD 20737; (301) 851–2159. For copies of more detailed information on the information collection, contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2727.

SUPPLEMENTARY INFORMATION:

Title: Importation of Fresh Citrus Fruit From Uruguay, Including *Citrus* Hybrids and *Fortunella* spp., Into the Continental United States.

OMB Control Number: 0579–0401.

Type of Request: Approval of an information collection.

Abstract: The Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture to restrict the importation, entry, or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States. Regulations authorized by the PPA concerning the importation of fruits and vegetables into the United States from certain parts of the world are contained in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–75).

Section 319.56–59 of the regulations provides the requirements for the importation of fresh citrus fruit from Uruguay, including *Citrus* hybrids and *Fortunella* spp., into the continental United States under a systems approach. This systems approach includes, among other things, requirements for production sites and packinghouses, pest monitoring and pest control practices, orchard sanitation, packinghouse procedures, a phytosanitary certificate, and the importation of commercial consignments only. In addition, the regulations require the use of information collection activities, such as a bilateral workplan, production site and packinghouse registration, monitoring and inspection of registered production sites, investigation and remedial action, carton markings, recordkeeping, certification and monitoring of treatment facilities, and a phytosanitary certificate.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.426 hours per response.

Respondents: Citrus producers, packers, importers, and the national plant protection organization officials of Uruguay.

Estimated annual number of respondents: 16.

Estimated annual number of responses per respondent: 192.3.

Estimated annual number of responses: 3,077.

Estimated total annual burden on respondents: 1,311 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 2nd day of November 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016–26941 Filed 11–7–16; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2014–0056]

Withdrawal of an Environmental Assessment for the Field Release of Genetically Engineered Diamondback Moths

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we are withdrawing an environmental assessment that was prepared by the Animal and Plant Health Inspection Service relative to a permitted environmental release of diamondback moths which have been genetically engineered for repressible female lethality and to express red fluorescence as a marker. While we reached a finding of no significant impact (FONSI) in connection with this action and posted that FONSI on our Web site, the public was not notified of the FONSI via publication of an associated notice in the **Federal Register**. We are therefore withdrawing the environmental assessment and FONSI.

FOR FURTHER INFORMATION CONTACT: Mrs. Chessa Huff-Woodard, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 146, Riverdale, MD 20737–1236; (301) 851–3943.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered (GE) organisms and products are considered ''regulated articles.'' A permit must be obtained or a notification acknowledged before a regulated article may be released into the environment. The regulations set forth the permit application requirements and the notification procedures for the importation, interstate movement, or release into the environment of a regulated article.

Subsequent to a permit application from Cornell University (APHIS Permit Number 13–297–102r) seeking the permitted field release of three strains of GE diamondback moth (DBM), *Plutella xylostella,* strains designated as OX4319L-Pxy, OX4319N-Pxy, and OX4767A-Pxy, which have been genetically engineered to exhibit red fluorescence (DsRed2) as a marker and repressible female lethality, on August 28, 2014, the Animal and Plant Health Inspection Service (APHIS) published in the **Federal Register** a notice [1] (79 FR 51299–51300, Docket No. APHIS–2014–0056) in which we announced the availability, for public review and comment, of an environmental assessment (EA) that examined the potential environmental impacts associated with the proposed release of the GE DBMs.

We solicited comments on the EA for 30 days ending September 29, 2014. We received 287 comments by that date. The comments were from industry organizations, environmental and consumer advocacy groups, researchers, and private citizens.

Based upon analysis described in the EA and a thorough review of the comments we received, APHIS determined that release of the GE DBMs would not have a significant impact on the quality of the human environment. This finding of no significant impact (FONSI) was posted on the APHIS Web site.

In November 2014, APHIS issued Permit Number 13–297–102r, which allowed for open field release of the GE DBMs. No open field releases took place under this permit. In July 2015, the initial permit was amended to add caged releases to the list of allowable actions (APHIS Permit Number 13–297–102r–a1). Caged releases pursuant to the amended permit occurred between July 2015 and March 11, 2016, when the permit was withdrawn.

Although, as mentioned previously, we posted the FONSI on our Web site, we failed to formally advise the public of our FONSI regarding the release of GE DBMs via publication of a second notice in the **Federal Register**. Therefore, we are withdrawing the EA and FONSI associated with the August 28, 2014, notice.

[1] To view the notice, supporting documents, and comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0056.*

On March 16, 2016, APHIS received a permit application from Cornell University (APHIS Permit Number 16–076–101r) seeking the permitted field release of GE DBMs in both open and caged releases. We are currently preparing an EA for this new application and will publish notices associated with the EA and FONSI (if one is reached) in the **Federal Register**.

Done in Washington, DC, this 2nd day of November 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016–26935 Filed 11–7–16; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2016–0069]

Availability of an Environmental Assessment for the Biological Control of Giant Reed

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared a draft environmental assessment relative to the control of giant reed (*Arundo donax).* The environmental assessment considers the effects of, and alternatives to, the field release of a gall-forming fly, *Lasioptera donacis,* into the continental United States for use as a biological control agent to reduce the severity of giant reed infestations. We are making the environmental assessment available to the public for review and comment.

DATES: We will consider all comments that we receive on or before December 8, 2016.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2016-0069.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2016–0069, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2016-0069* or in our reading room, which is located in

room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Colin D. Stewart, Assistant Director, Pests, Pathogens, and Biocontrol Permits Permitting and Compliance Coordination, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 851–2327, email: *Colin.D.Stewart@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Giant reed (*Arundo donax*), a native of the Mediterranean and Middle East, has become one of the most pervasive non-native plants to invade the riparian areas of the Southwest United States, especially in California and the Rio Grande area of Texas. Giant reed infestations in riparian habitats lead to loss of biodiversity, stream bank erosion, altered channel morphology, damage to bridges, increased costs for chemical and mechanical control along transportation corridors, and impediment of law enforcement activities on the international border. Many Federal and State agencies, as well as private entities, conduct programs to manage giant reed, as well as other invasive weeds. The Animal and Plant Health Inspection Service (APHIS) is proposing to issue permits for the field release of a gall-forming fly, *Lasioptera donacis,* into the continental United States to reduce the severity of giant reed infestations.

APHIS' review and analysis of the proposed action are documented in detail in a draft environmental assessment (EA) entitled ''Field release of the European leaf sheath mining midge, *Lasioptera donacis* Coutin (Diptera: Cecidomyiidae), for biological control of giant reed, *Arundo donax* L. (Poales: Poaceae) in the Contiguous United States'' (April 2016). We are making the EA available to the public for review and comment. We will consider all comments that we receive on or before the date listed under the heading **DATES** at the beginning of this notice.

The EA may be viewed on the *Regulations.gov* Web site or in our reading room (see **ADDRESSES** above for a link to *Regulations.gov* and information on the location and hours of the reading room). You may request paper copies of the EA by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT.** Please refer to the title of the EA when requesting copies.

The EA has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*); (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508); (3) USDA regulations implementing NEPA (7 CFR part 1b); and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 2nd day of November 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016–26937 Filed 11–7–16; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE985

Atlantic Highly Migratory Species; Advisory Panel

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; solicitation of nominations.

SUMMARY: NMFS solicits nominations for the Atlantic Highly Migratory Species (HMS) Advisory Panel (AP). NMFS consults with and considers the comments and views of the HMS AP when preparing and implementing Fishery Management Plans (FMPs) or FMP amendments for Atlantic tunas, swordfish, sharks, and billfish. Nominations are being sought to fill approximately one-third (11) of the seats on the HMS AP for a 3-year appointment. Individuals with definable interests in the recreational and commercial fishing and related industries, environmental community, academia, and non-governmental organizations are considered for membership on the HMS AP.

DATES: Nominations must be received on or before December 8, 2016.

ADDRESSES: You may submit nominations and requests for the Advisory Panel Statement of Organization, Practices, and Procedures by any of the following methods:

- *Email: HMSAP.Nominations@noaa.gov.* Include in the subject line the following identifier: ''HMS AP Nominations.''
- *Mail:* Margo Schulze-Haugen, Highly Migratory Species Management Division, NMFS SF1, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Peter Cooper at (301) 427–8503.

SUPPLEMENTARY INFORMATION:

Introduction

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.,* as amended by the Sustainable Fisheries Act, Public Law 104–297, provided that the Secretary may establish Advisory Panels to assist in the collection and evaluation of information relevant to the development of any Fishery Management Plan (FMP) or FMP amendment for any highly migratory species fishery that is under the Secretary's authority. NMFS has consulted with the HMS AP on: Amendment 1 to the Billfish FMP (April 1999); the HMS FMP (April 1999); Amendment 1 to the HMS FMP (December 2003); the 2006 Consolidated HMS FMP (October 2006); Amendments 1, 2, 3, 4, 5a, 5b, 6, 7, 8, 9, and 10 to the 2006 Consolidated HMS FMP (April and October 2008, February and September 2009, May and September 2010, April and September 2011, March and September 2012, January and September 2013, April and September 2014, March and September 2015, and March and September 2016); among other relevant fishery management issues.

Procedures and Guidelines

A. Nomination Procedures for Appointments to the Advisory Panel

Nomination packages should include:

1. The name of the nominee and a description of his/her interest in HMS or HMS fisheries, or in particular species of sharks, swordfish, tunas, or billfish;
2. Contact information, including mailing address, phone, and email of the nominee;
3. A statement of background and/or qualifications;
4. A written commitment that the nominee shall actively participate in good faith, and consistent with ethics obligations, in the meetings and tasks of the HMS AP; and
5. A list of outreach resources that the nominee has at his/her disposal to communicate HMS issues to various interest groups.

Qualifications for HMS AP Membership

Qualification for membership includes one or more of the following:

(1) Experience in HMS recreational fisheries; (2) experience in HMS commercial fisheries; (3) experience in fishery-related industries (*e.g.,* marinas, bait and tackle shops); (4) experience in the scientific community working with HMS; and/or (5) representation of a private, non-governmental, regional, national, or international organization representing marine fisheries, or environmental, governmental, or academic interests dealing with HMS.

Tenure for the HMS AP

Member tenure will be for 3 years (36 months), with approximately one-third of the members' terms expiring on December 31 of each year. Nominations are sought for terms beginning January 2017 and expiring December 2019.

B. Participants

Nominations for the HMS AP will be accepted to allow representation from commercial and recreational fishing interests, academic/scientific interests, and the environmental/non-governmental organization community, who are knowledgeable about Atlantic HMS and/or Atlantic HMS fisheries. Current representation on the HMS AP, as shown in Table 1, consists of 12 members representing commercial interests, 12 members representing recreational interests, 4 members representing environmental interests, 4 academic representatives, and the International Commission for the Conservation of Atlantic Tunas (ICCAT) Advisory Committee Chairperson. Each HMS AP member serves a 3-year term with approximately one-third of the total number of seats (33) expiring on December 31 of each year. NMFS seeks to fill 3 commercial, 5 recreational, and 2 environmental organization vacancies by December 31, 2016. NMFS will seek to fill vacancies based primarily on maintaining the current representation from each of the sectors. NMFS also considers species expertise and representation from the fishing regions (Northeast, Mid-Atlantic, Southeast, Gulf of Mexico, and Caribbean) to ensure the diversity and balance of the AP. Table 1 includes the current representation on the HMS AP by sector, region, and species with terms that are expiring identified in bold. It is not meant to indicate that NMFS will only consider persons who have expertise in the species or fishing regions that are listed. Rather, NMFS will aim toward having as diverse and balanced an AP as possible.

TABLE 1—CURRENT REPRESENTATION ON THE HMS AP BY SECTOR, REGION, AND SPECIES

[Terms that are expiring or for whom current members are stepping down are in bold. NMFS tries to maintain diversity and balance in representation among fishing regions and species]

Sector	Fishing region	Species	Date appointed	Date term expires
Academic	All	Swordfish/Tuna	1/1/2015	12/31/2017
Academic	All	Tuna	1/1/2016	12/31/2018
Academic	Southeast/Gulf of Mexico	Shark	1/1/2016	12/31/2018
Academic	Southeast	Swordfish/HMS	1/1/2016	12/31/2018
Commercial	Mid-Atlantic	HMS/Shark	1/1/2014	12/31/2016
Commercial	Northeast	Swordfish/Tuna	1/1/2014	12/31/2016
Commercial	Gulf of Mexico	Shark	1/1/2014	12/31/2016
Commercial	Gulf of Mexico	Shark	1/1/2015	12/31/2017
Commercial	Mid-Atlantic	HMS	1/1/2015	12/31/2017
Commercial	Northeast	Tuna/Swordfish	1/1/2015	12/31/2017
Commercial	Gulf of Mexico	Tuna/Swordfish	1/1/2015	12/31/2017
Commercial	Northeast	Tuna	1/1/2015	12/31/2017
Commercial	Northeast	Tuna	1/1/2015	12/31/2017
Commercial	Southeast	Shark	1/1/2016	12/31/2018
Commercial	Southeast	Swordfish/Tuna	1/1/2016	12/31/2018
Commercial	Northeast	Tuna	1/1/2016	12/31/2018
Environmental	All	Tuna	1/1/2014	12/31/2016
Environmental	All	HMS	1/1/2015	12/31/2017
Environmental	All	Shark	1/1/2015	12/31/2017
Environmental	All	HMS	1/1/2016	12/31/2018
Recreational	Northeast	HMS	1/1/2013	12/31/2016
Recreational	Northeast	Tuna	1/1/2014	12/31/2016
Recreational	Mid-Atlantic	HMS	1/1/2014	12/31/2016
Recreational	Southeast	Billfish	1/1/2014	12/31/2016
Recreational	Gulf of Mexico	HMS	1/1/2014	12/31/2016
Recreational	Gulf of Mexico/Southeast	Billfish	1/1/2015	12/31/2017
Recreational	Mid-Atlantic	Shark	1/1/2015	12/31/2017
Recreational	Mid-Atlantic	Tuna	1/1/2015	12/31/2017
Recreational	Northeast	Tuna/Shark	1/1/2016	12/31/2018
Recreational	Northeast	HMS	1/1/2016	12/31/2018
Recreational	Mid-Atlantic	HMS	1/1/2016	12/31/2018
Recreational	Southeast	Billfish/HMS	1/1/2016	12/31/2018

The intent is to have a group that, as a whole, reflects an appropriate and equitable balance and mix of interests given the responsibilities of the HMS AP.

Five additional members on the HMS AP include one member representing each of the following Councils: New England Fishery Management Council, the Mid-Atlantic Fishery Management Council, the South Atlantic Fishery Management Council, the Gulf of Mexico Fishery Management Council, and the Caribbean Fishery Management Council. The HMS AP also includes 22 ex-officio participants: 20 representatives of the coastal states and two representatives of the interstate commissions (the Atlantic States Marine Fisheries Commission and the Gulf States Marine Fisheries Commission).

NMFS will provide the necessary administrative support, including technical assistance, for the HMS AP. However, NMFS will not compensate participants with monetary support of any kind. Depending on availability of funds, members may be reimbursed for travel costs related to the HMS AP meetings.

C. Meeting Schedule

Meetings of the HMS AP will be held as frequently as necessary but are routinely held twice each year—once in the spring, and once in the fall. The meetings may be held in conjunction with public hearings.

Dated: November 3, 2016.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–26943 Filed 11–7–16; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2010–0041]

Collection of Information; Proposed Extension of Approval; Comment Request—Publicly Available Consumer Product Safety Information Database

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (PRA), the Consumer Product Safety Commission (CPSC or Commission) requests comments on a proposed extension of approval of a collection of information for the Publicly Available Consumer Product Safety Information Database. The Commission will consider all comments received in response to this notice before requesting an extension of approval of this collection of information from the Office of Management and Budget (OMB).

DATES: Submit written or electronic comments on the collection of information by December 8, 2016.

ADDRESSES: OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: CPSC Desk Officer, FAX: 202–395–6974, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified by Docket No. CPSC–2010–0041. In addition, written comments also should be submitted at *http://www.regulations.gov,* under Docket No. CPSC–2010–0041, or by mail/hand delivery/courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923. For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For further information contact: Robert H. Squibb, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; (301) 504–7815, or by email to: *rsquibb@cpsc.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 19, 2016 (81 FR 55449), the CPSC published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). This notice announced CPSC's intention to seek extension of approval of a collection of information for a database on the safety of consumer products and other products and substances regulated by the Commission (Database), as required by section 212 of the Consumer Product Safety Improvement Act of 2008 (CPSIA). We received one general comment in support of the Database in response to the August 19 notice. The commenter noted that the existence of the Database may reduce FOIA requests. Nothing in the comment addressed CPSC's burden analysis. Accordingly, by publication of this notice, the Commission announces that it has submitted to the Office of Management and Budget (OMB) a request for extension of approval of the collection of information for the Database without change.

A. Background

Section 212 of the CPSIA added section 6A to the Consumer Product Safety Act (CPSA), which requires the Commission to establish and maintain a publicly available, searchable database on the safety of consumer products and other products or substances regulated by the Commission. Among other things, section 6A of the CPSA requires the Commission to collect reports of harm from the public for potential publication in the publicly available Database, and to collect and publish comments about reports of harm from manufacturers. As explained in the August 19, 2016 **Federal Register** notice (81 FR 55449), the Commission sought, and OMB approved, the collection of information for the Database under control number 3041–0146. OMB's most recent extension of approval on December 2, 2013 will expire on December 31, 2016. Accordingly, the Commission now proposes to request an extension of approval of this collection of information. Details about the information collected through the Database are provided in the August 19, 2016 notice.

B. Estimated Burden

1. Estimated Annual Burden for Respondents

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN FOR REPORTS OF HARM

Collection type	Number of respondents	Response frequency [1]	Total annual responses	Minutes per response	Total burden, in hours [2]
Reports of Harm—submitted through Web site	6,582	1.03	6,790	12	1,358
Reports of Harm—submitted by phone	2,632	1.01	2,643	10	441
Reports of Harm—submitted by mail, email, fax	780	6.67	5,206	20	1,735
Total	9,994		14,639		3,534

[1] Frequency of responses is calculated by dividing the number of responses by the number of respondents.

[2] Numbers have been rounded.

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN FOR MANUFACTURER SUBMISSIONS

Collection type	Number of respondents	Response frequency [1]	Total annual responses	Minutes per response	Total burden, in hours [2]
Manufacturer Comments—submitted through Web site	532	6.23	3,317	117	6,468
Manufacturer Comments—submitted by mail, email, fax	283	1.22	346	147	848
Requests to Treat Information as Confidential—submitted through Web site	12	1.08	13	42	9
Requests to Treat Information as Confidential—submitted by mail, email, fax	0	n/a	0	72	0
Requests to Treat Information as Materially Inaccurate—submitted through Web site	131	1.82	238	165	655
Requests to Treat Information as Materially Inaccurate—submitted by mail, email, fax	79	1.06	84	195	273
Voluntary Brand Identification	829	1.48	1,228	10	205
Small Batch Manufacturer Identification	2,208	1	2,208	10	368
Total	4,074		7,434		8,826

Based on the data set forth in Tables 1 and 2 above, the annual reporting cost is estimated to be $719,381. This estimate is based on the sum of two estimated total figures for reports of harm and manufacturer submissions. The estimated number of respondents and responses are based on the actual responses received in FY 2015. We assume that the number of responses and respondents will be similar in future years.

Reports of Harm: Table 1 sets forth the data used to estimate the burden associated with submitting reports of harm. We had previously estimated the time associated with the electronic and telephone submission of reports of harm at 12 and 10 minutes, respectively, and because we have had no indication that these estimates are not appropriate or accurate, we used those figures for present purposes as well. We estimate that the time associated with a paper or PDF form would be 20 minutes, on average.

To estimate the costs for submitting reports of harm, we multiplied the estimated total burden hours associated with reports of harm (1,358 hours + 441 hours + 1,735 hours = 3,534 hours) by an estimated total compensation for all workers in private industry of $32.06 per hour,[3] which results in an estimated cost of $113,300 (3,534 hours × $32.06 per hour = $113,300).

Manufacturer Submissions: Table 2 sets forth the data used to estimate the burden associated with manufacturers' submissions to the Database. We observed that a large percentage of the general comments come from a few businesses and assumed that the experience of a business that submits many comments each year would be different from one that submits only a few. Accordingly, we divided all responding businesses into three groups, based on the number of general comments submitted in FY 2015; and then we selected several businesses from each group to contact. The first group we contacted consisted of businesses that submitted 50 or more comments in FY 2015, accounting for 31 percent of all general comments received. The second group we contacted included businesses that submitted 6 to 49 comments, accounting for 39 percent of all general comments received. The last group contacted included businesses that submitted no more than five comments, accounting for 30 percent of all general comments received.[4] We asked each company contacted how long it typically takes to research, compose, and enter a comment, a claim of materially inaccurate information, or a confidential information claim.

To estimate the burden associated with submitting a general comment through the business portal regarding a report of harm, we averaged the burden provided by each company within each group and then calculated a weighted average from the three groups, weighting each group by the proportion of comments received from that group. We found that the average time to submit a general comment regarding a report of harm is 117 minutes based on the data in Table 3 (((15 minutes + 45 minutes + 30 minutes + 15 minutes)/4 companies)*.31 + ((105 minutes + 45 minutes + 150 minutes + 15 minutes)/4 companies)*.39 + ((240 minutes + 60 minutes + 480 minutes)/3 companies)*.30 = 117 minutes).

TABLE 3—ESTIMATED BURDEN TO ENTER A GENERAL COMMENT IN THE DATABASE

Group	Company	General comments
Group 1 (>=50 comments)	Company A	15
	Company B	45
	Company C	30
	Company D	15
Group 2 (6–49 comments)	Company A	105
	Company B	45
	Company C	150
	Company D	15

[3] U.S. Department of Labor, Bureau of Labor Statistics, Table 9 of the Employer Costs for Employee Compensation (ECEC), Private Industry, goods-producing and service-providing industries, by occupational group, June 2016 (data extracted on 06/23/2016 from *http://www.bls.gov/news.release/ecec.t09.htm*

[4] In the last group one company was excluded as an outlier.

TABLE 3—ESTIMATED BURDEN TO ENTER A GENERAL COMMENT IN THE DATABASE—Continued

Group	Company	General comments
Group 3 (≤= 5 comments)	Company A	240
	Company B	60
	Company C	480

Registered businesses generally submit comments through our Web site. Unregistered businesses submit comments by mail, email, or fax. We estimate that for unregistered businesses, submitting comments takes a little longer because we often must ask the businesses to amend their submissions to include the required certifications. Thus, we estimated that on average, comments submitted by mail, email, or fax take 30 minutes longer than those submitted through our Web site (117 minutes + 30 minutes = 147 minutes).

The submission of a claim of materially inaccurate information is a relatively rare event for all respondents. Accordingly, we averaged all responses together. Eight of the businesses contacted had submitted claims of materially inaccurate information. We found that the average time to submit a claim that a report of harm contains a material inaccuracy is 165 minutes ((30 minutes + 90 minutes + 45 minutes + 90 minutes + 60 minutes + 660 minutes + 45 minutes + 300 minutes)/8 companies = 165 minutes).

Registered businesses generally submit claims through the business portal. Unregistered businesses submit claims by mail, email, or fax. We estimate that submitting claims by mail, email, or fax takes a little longer because we often must ask the businesses to amend their submission to include the required certifications. Thus, we estimated that on average, claims submitted by mail, email, or fax take 30 minutes longer than those submitted through our Web site (165 minutes + 30 minutes = 195 minutes).

The submission of a claim of confidential information is a relatively rare event for all respondents; accordingly, we averaged all responses together. Five of the businesses contacted had submitted claims of confidential information. We found that the average time to submit a claim that a report of harm contains confidential information is 42 minutes ((45 minutes + 15 minutes + 60 minutes + 30 minutes + 60 minutes)/5 companies = 42 minutes).

Registered businesses generally submit confidential information claims through the business portal. Unregistered businesses submit confidential information claims by mail, email, or fax. We estimate that submitting claims in this way takes a little longer because we often must ask the businesses to amend their submission to include the required certifications. Thus, we estimate that a confidential information claim submitted by mail, email, or fax would take 30 minutes longer than those submitted through our Web site (42 minutes + 30 minutes = 72 minutes).

For voluntary brand identification, we estimate that a response would take 10 minutes on average. Most responses consist only of the brand name and a product description. In many cases a business will submit multiple entries in a brief period of time and, based on the date and time stamps on these records, an entry often takes less than two minutes. CPSC staff enters the same data in a similar form based on our own research, and that experience was also factored into our estimate.

For small batch manufacturer identification, we estimate that a response would take 10 minutes on average. The form consists of three check boxes and the information should be readily accessible to the respondent.

The responses summarized in Table 2 are generally submitted by manufacturers. To avoid underestimating the cost associated with the collection of this data, we assigned the higher hourly wage associated with a manager or professional in goods-producing industries to these tasks. To estimate the cost of manufacturer submissions we multiplied the estimated total burden hours in Table 2 (8,826 hours) by an estimated total compensation for a manager or professional in goods-producing industries of $68.67 per hour,[5] which results in an estimated cost of $606,081 (8,826 hours × $68.67 per hour = $606,081).

Therefore, the total estimated annual cost to respondents is $719,381 ($113,300 burden for reports of harm + $606,081 burden for manufacturer submissions = $719,381).

2. Estimated Annual Burden on Government

We estimate the annualized cost to the CPSC to be $954,531. This figure is based on the costs for four categories of work for the Database: Reports of Harm, Materially Inaccurate Information Claims, Manufacturer Comments, and Small Batch Identification. Each category is described below. No government cost is associated with Voluntary Brand Identification because this information is entered directly into the Database by the manufacturer with no processing required by the government. The information assists the government in directing reports of harm to the correct manufacturer. We did not attempt to calculate separately the government cost for claims of confidential information because the number of claims is so small. The time to process these claims is included with claims of materially inaccurate information.

Reports of Harm: The Reports of Harm category includes many different tasks. Some costs related to this category are from two data entry contracts. Tasks related to these contracts include clerical coding of the report, such as identifying the type of consumer product reported and the appropriate associated hazard, as well as performing quality control on the data in the report. Contractor A spends an estimated 5,267 hours per year performing these tasks. With an hourly rate of $33.31 for contractor services, the annual cost to the government of contract A is $175,444. Contractor B spends an estimated 2,539 hours per year performing these tasks. With an hourly rate of $58.09 for contractor services, the annual cost to the government of contract B is $147,491.

The Reports of Harm category also includes sending consent requests for reports when necessary, processing that consent when received, determining whether a product is out of CPSC's jurisdiction, and confirming that pictures and attachments do not have any personally identifiable information. The Reports category also entails

[5] U.S. Department of Labor, Bureau of Labor Statistics, Table 9 of the Employer Costs for Employee Compensation (ECEC), Private Industry, goods-producing and service-providing industries, by occupational group, June 2016 (data extracted on 06/23/2016 from *http://www.bls.gov/news.release/ecec.t09.htm.*

notifying manufacturers when one of their products is reported, completing a risk of harm determination form for every report eligible for publication, referring some reports to a Subject Matter Expert (SME) within the CPSC for a determination on whether the reports meet the requirement of having a risk of harm, and determining whether a report meets all the statutory and regulatory requirements for publication. Detailed costs are:

TABLE 4—ESTIMATED COSTS FOR REPORTS OF HARM TASK

Grade level	Number of hours (annual)	Total compensation per hour	Total annual cost
Contract A	5,267	$33.31	$175,444
Contract B	2,539	58.09	147,491
7	200	34.78	6,956
9	300	42.69	12,807
12	5,528	61.91	342,238
13	428	73.37	31,402
14	1,068	86.99	92,905
Total	15,330		809,243

Materially Inaccurate Information (MII) Claims: The MII claims category includes reviewing and responding to claims, participating in meetings where the claims are discussed, and completing a risk of harm determination on reports when a company alleges that a report does not describe a risk of harm.

TABLE 5—ESTIMATED COSTS FOR MII CLAIMS TASK

Grade level	Number of hours (annual)	Total compensation per hour	Total annual cost
12	275	$61.91	$17,025
13	167	73.37	12,253
14	323	86.99	28,098
15	50	101.99	5,100
SES	50	109.97	5,499
Total	865		67,975.00

Manufacturer Comments: The Comments category includes reviewing and accepting or rejecting comments.

TABLE 6—ESTIMATED COSTS FOR MANUFACTURER COMMENTS TASK

Grade level	Number of hours (annual)	Total compensation per hour	Total annual cost
12	62	$61.91	$3,838
13	109	73.37	7,997
Total	171		11,835

Small Batch Manufacturer Identification: The Small Batch Manufacturer Identification category includes time spent posting the list of small batch registrations, as well as answering manufacturers' questions on registering as a Small Batch company and what the implications to that company of small batch registration.

TABLE 7—ESTIMATED COSTS FOR SMALL BATCH TASK

Grade level	Number of hours (annual)	Total compensation per hour	Total annual cost
15	642	$101.99	$65,478
Total	642		65,478

We estimate the annualized cost to the CPSC of $954,531 by adding the four categories of work related to the Database summarized in Tables 4 through 7 (Reports of Harm ($809,243) + MII Claims ($67,975) + Manufacturer Comments ($11,835) + Small Batch Identification ($65,478) = $954,531).

This information collection renewal request based on an estimated 12,360 burden hours per year for the Database is a decrease of 7,485 hours since this collection of information was last approved by OMB in 2013. The decrease in burden is due primarily to the fact that the number of incoming reports of harm has decreased, and the number of claims based on those reports has decreased as well. While comments did not decline significantly, they did shift to the more efficient online submissions. We note a large increase in small batch manufacturer activity, which has been rising steadily for years. However, this increase was not large enough to offset the decreases in other areas.

Dated: November 3, 2016.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2016–26963 Filed 11–7–16; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Board Membership

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of a Performance Review Board for the Department of the Army.

DATES: *Effective Date:* November 01, 2016.

FOR FURTHER INFORMATION CONTACT: Barbara Smith, Civilian Senior Leader Management Office, 111 Army Pentagon, Washington, DC 20310–0111.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The Department of the Army Performance Review Board will be composed of a subset of the following individuals:

1. Ms. Lisha Adams, Executive Deputy to the Commanding General, U.S. Army Materiel Command.
2. LTG Joseph Anderson, Deputy Chief of Staff, G–3/5/7, Department of the Army.
3. LTG Robert P. Ashley Jr., Deputy Chief of Staff, G–2, Department of the Army.
4. Mr. Stephen D. Austin, Assistant Chief of the Army Reserve, Office of the Chief Army Reserve.
5. LTG Gwendolyn Bingham, Assistant Chief of Staff for Installation Management, Department of the Army.
6. Dr. Joseph L. Corriveau, Director, Edgewood Chemical Biological Center, U.S. Army Edgewood Chemical Biological Center, U.S. Army Research, Development and Engineering Command.
7. Mr. James C. Dalton, Director of Civil Works, U.S. Army Corps of Engineers.
8. Ms. Gwendolyn R. DeFilippi, Director, Civilian Senior Leader Management Office, Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs).
9. Ms. Steffanie B. Easter, Principal Deputy Assistant Secretary of the Army for Acquisition, Policy and Logistics, Office of the Assistant Secretary of the Army (Acquisition, Logistics, and Technology).
10. Ms. Sue A. Engelhardt, Director of Human Resources, U.S. Army Corps of Engineers.
11. Mr. Randall L. Exley, The Auditor General, U.S. Army, Office of the Auditor General.
12. Mr. Richard Fong, Senior Research Scientist (Warheads Technology), U.S. Army Armament Research, Development, and Engineering Center (ARDEC), U.S. Army Research, Development and Engineering Command.
13. Ms. Susan J. Goodyear, Deputy Chief of Staff for Resource Management, U.S. Army Materiel Command.
14. Mr. Patrick K. Hallinan, Executive Director of the Army National Cemeteries Program, Department of the Army.
15. Mr. Stuart A. Hazlett, Director of Contracting, U.S. Army Corps of Engineers.
16. Ms. Ellen M. Helmerson, Deputy Chief of Staff, G–8, U.S. Army Training and Doctrine Command.
17. Mr. David Jimenez, Assistant to the Deputy Under Secretary of the Army/Director of Test and Evaluation.
18. MG Donald E. Jackson, Jr., Deputy Commanding General for Civil and Emergncy Operations, U.S. Army Corps of Engineers.
19. MG Daniel I. Karbler, Commanding General, U.S. Army Test and Evaluation Command.
20. Ms. Krystyna M. A. Kolesar, Deputy Director, Program Analysis & Evaluation Directorate, Office of the Deputy Chief of Staff, G–8.
21. Mr. Mark R. Lewis, Executive Advisor to the Adminstrative Assistant to the Secretary of the Army, Office of the Administrative Assistant.
22. LTG Kevin W. Mangum, Deputy Commanding General/Chief of Staff, U.S. Army Training and Doctrine Command.
23. Mr. David Markowitz, Assistant Deputy Chief of Staff, G–8, Deputy Chief of Staff, G–8.
24. Mr. Joseph M. McDade, Principal Deputy General Counsel of the Air Force.
25. Ms. Kathleen S. Miller, Assistant Deputy Chief of Staff for Operations (G–3/5/7), Office of the Deputy Chief of Staff, G–3/5/7.
26. Mr. William F. Moore, Assistant Deputy Chief of Staff, G–4, Office of the Deputy Chief of Staff, G–4.
27. Mr. Levator Norsworthy Jr., Deputy General Counsel(Acquisition)/ Senior Deputy General Counsel, Office of the General Counsel.
28. Mr. Gerald B. O'Keefe, Administrative Assistant to the Secretary of the Army, Office of the Administrative Assistant to the Secretary of the Army.
29. Mr. Philip R. Park, Principal Deputy General Counsel, Office of the General Counsel.
30. LTG Gustave F. Perna, Commanding General, U.S. Army Materiel Command.
31. Mr. Dean E. Pfoltzer, Principal Director, Policy and Resources/Chief Financial Officer, Office of the Chief Information Officer/G–6.
32. Mr. David W. Pittman, Deputy Director, Engineer Research and Development Center, U.S. Army Corps of Engineers.
33. Mr. Vic S. Ramdass, Director for Partnering USSOUTHCOM, U.S. Southern Command.
34. Ms. Diane M. Randon, Deputy Assistant Chief of Staff for Installation Management, Office of the Assistant Chief of Staff for Installation Management.
35. Mr. Jeffrey N. Rapp, Assistant Deputy Chief of Staff, G–2 Office of the Deputy Chief of Staff, G–2.
36. Dr. Jaques Reifman, Senior Research Scientist (Advanced Medical Technology), U.S. Army Medical Research Materiel Command.
37. Mr. J. Randall Robinson, Principal Deputy to the Assistant Secretary of the Army (Installations, Energy and

Environment), Office of the Assistant Secretary of the Army (Installations and Environment).

38. Mr. Craig R. Schmauder, Deputy General Counsel (Installation, Environment and Civil Works), Office of the General Counsel.

39. Mr. Karl F. Schneider, Deputy Chief Management Officer, Office of the Under Secretary of the Army.

40. LTG Todd T. Semonite, Commanding General, U.S. Army Corps of Engineers.

41. Ms. Monica Shephard, Vice Director for Joint Force Development, J7.

42. MG James E. Simpson, Commanding General, U.S. Army Contracting Command.

43. Ms. Caral E. Spangler, Principal Deputy Assistant Secretary of the Army (Financial Management and Comptroller). Office of the Assistant Secretary of the Army (Financial Management & Comptroller).

44. Honorable Robert M. Speer, Assistant Secretary of the Army (Financial Management & Comptroller), Office of the Assistant Secretary of the Army (Financial Management & Comptroller).

45. Ms. Patricia P. Stokes, Senior Security Advisor, U.S. Department of the Army, Office of the Deputy Chief of Staff, G–2.

46. Honorable Debra S. Wada, Assistant Secretary of the Army (Manpower and Reserve Affairs), Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs).

47. Mr. Davis S. Welch, Deputy Director and Senior Advisor for Army Budget, Office of the Assistant Secretary of the Army (Financial Management & Comptroller).

48. MG Darell K. Williams, Commanding General, U.S. Army Combined Arms Support Command, U.S. Army Training and Doctrine Command.

49. LTG Michael E. Williamson, Deputy Assistant Secretary of the Army (Acquisition, Logistics and Technology), Office of the Assistant Secretary of the Army (Acquisition, Logistics and Technology).

50. LTG Larry D. Wyche, Deputy Commanding General, U.S. Army Material Command.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2016–26929 Filed 11–7–16; 8:45 am]

BILLING CODE 5001–03–P

DEPARTMENT OF DEFENSE

Department of the Army

Board of Visitors, United States Military Academy

AGENCY: Department of the Army, DoD.

ACTION: Notice of committee meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. § 552b, as amended), and 41 CFR § 102–3.150, the Department of Defense announces that the following Federal advisory committee meeting will take place.

DATES: The meeting will be held on Wednesday, November 30, 2016, Time 1:30–4:30 p.m. Members of the public wishing to attend the meeting will be need to show photo identification in order to gain access to the meeting location. All participants are subject to security screening.

ADDRESSES: The meeting will be held in Room 1301, Agricultural Committee Hearing Room, Longworth House Office Building, New Jersey and Independence Avenues SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mrs. Deadra K. Ghostlaw, the Designated Federal Officer for the committee, in writing at: Secretary of the General Staff, ATTN: Deadra K. Ghostlaw, 646 Swift Road, West Point, NY 10996; by email at: *deadra.ghostlaw@usma.edu* or *BoV@usma.edu;* or by telephone at (845) 938–4200.

SUPPLEMENTARY INFORMATION: The committee meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. § 552b, as amended), and 41 CFR § 102–3.150. The USMA BoV provides independent advice and recommendations to the President of the United States on matters related to morale, discipline, curriculum, instruction, physical equipment, fiscal affairs, academic methods, and any other matters relating to the Academy that the Board decides to consider.

Purpose of the Meeting: This is the 2016 Fall Meeting of the USMA BoV. Members of the Board will be provided updates on Academy issues.

Agenda: The Board Chair will discuss the following topics: Introduction; Board Business; Key Events; Highlights; Offsite Assessment/Strategic Action Plan; Class of 2021 Update; United States Corps of Cadets Updates: Branching Results and Integrated Boxing; Dean of the Academic Board Updates; Sexual Harassment/Assault Response and Prevention (SHARP) Update; Athletic Department Restructure Update; USMA Construction Update; Davis barracks move in timeline; Memorialization Update; and Upcoming Events.

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. § 552b and 41 CFR §§ 102–3.140 through 102–3.165 and subject to the availability of space, this meeting is open to the public. Seating is on a first to arrive basis. Attendees are requested to submit their name, affiliation, and daytime phone number seven business days prior to the meeting to Mrs. Ghostlaw, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Pursuant to 41 CFR 102–3.140d, the committee is not obligated to allow a member of the public to speak or otherwise address the committee during the meeting, and members of the public attending the committee meeting will not be permitted to present questions from the floor or speak to any issue under consideration by the committee. Because the committee meeting will be held in a Federal Government facility security screening is required. A government photo ID is required to enter the building. Please note that security and gate guards have the right to inspect vehicles and persons seeking to enter and exit the installation. Longworth House Office Building, is fully handicap accessible. Wheelchair access is available at the entrance on Independence Avenue SE. For additional information about public access procedures, contact Mrs. Ghostlaw, the committee's Designated Federal Officer, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Comments or Statements: Pursuant to 41 CFR § 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the committee, in response to the stated agenda of the open meeting or in regard to the committee's mission in general. Written comments or statements should be submitted to Mrs. Ghostlaw, the committee Designated Federal Officer, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. Written comments or statements should be submitted to Mrs. Ghostlaw, the committee Designated

Federal Officer, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the Designated Federal Official at least seven business days prior to the meeting to be considered by the committee. The Designated Federal Official will review all timely submitted written comments or statements with the committee Chairperson and ensure the comments are provided to all members of the committee before the meeting. Written comments or statements received after this date may not be provided to the committee until its next meeting.

Pursuant to 41 CFR § 102–3.140d, the committee is not obligated to allow a member of the public to speak or otherwise address the committee during the meeting. However, the committee Designated Federal Official and Chairperson may choose to invite certain submitters to present their comments verbally during the open portion of this meeting or at a future meeting. The Designated Federal Officer, in consultation with the committee Chairperson, may allot a specific amount of time for submitters to present their comments verbally.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2016–26928 Filed 11–7–16; 8:45 am]

BILLING CODE 5001–03–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2016–OS–0110]

Manual for Courts-Martial; Publication of Supplementary Materials

AGENCY: Joint Service Committee on Military Justice (JSC), Department of Defense.

ACTION: Publication of Discussion and Analysis (Supplementary Materials) accompanying the Manual for Courts-Martial, United States (2012 ed.) (MCM).

SUMMARY: The JSC hereby publishes Supplementary Materials accompanying the MCM as amended by Executive Orders 13643, 13669, 13696, 13730, and 13740. These changes have not been coordinated within the Department of Defense under DoD Directive 5500.1, ''Preparation, Processing and Coordinating Legislation, Executive Orders, Proclamations, Views Letters and Testimony,'' June 15, 2007, and do not constitute the official position of the Department of Defense, the Military Departments, or any other Government agency. These Supplementary Materials have been approved by the JSC and the General Counsel of the Department of Defense, and shall be applied in conjunction with the rule with which they are associated. The Discussions are effective insofar as the Rules they supplement are effective, but may not be applied earlier than the date of publication in the **Federal Register**.

DATES: These Supplementary Materials are effective as of November 8, 2016.

FOR FURTHER INFORMATION CONTACT: Major Harlye S. Carlton, USMC, (703) 963–9299 or *harlye.carlton@usmc.mil.* The JSC Web site is located at: *http://jsc.defense.gov.*

SUPPLEMENTARY INFORMATION:

Public Comments: The JSC solicited public comments for these changes to the MCM via the **Federal Register** on October 23, 2012 (77 FR 64854–64887, Docket ID: DoD–2012–OS–0129), held a public meeting on December 11, 2012, and published the JSC response to public comments via the **Federal Register** on March 5, 2013 (78 FR 14271–14272, Docket ID: DoD–2012–OS–0129).

The amendments to the Discussion and Analysis of the MCM are as follows:

Annex

Section 1. Appendix 12 of the Manual for Courts-Martial, United States, is amended as follows:

(a) Article 120 is amended to read as follows:

''120 Rape and sexual assault generally

Offense	Discharge	Confinement	Forfeiture
Rape	*Mandatory* DD [5]	Life [4]	Total.
Sexual Assault	*Mandatory* DD [5]	30 yrs	Total.
Aggravated Sexual Contact	DD, BCD	20 yrs	Total.
Abusive Sexual Contact	DD, BCD	7 yrs	Total.''

(b) Article 120b is inserted to read as follows:

''120b Rape and sexual assault of a child

Offense	Discharge	Confinement	Forfeiture
Rape of a Child	*Mandatory* DD [5]	Life [4]	Total.
Sexual Assault of a Child	*Mandatory* DD [5]	30 yrs	Total.
Sexual Abuse of a Child:			
Cases Involving Sexual Contact	DD, BCD	20 yrs	Total.
Other Cases	DD, BCD	15 yrs	Total.''

(c) Article 120c is inserted to read as follows:

''120c Other sexual misconduct

Offense	Discharge	Confinement	Forfeiture
Indecent Viewing	DD, BCD	1 yr	Total.
Indecent Recording	DD, BCD	5 yrs	Total.
Broadcasting or Distributing of an Indecent Recording	DD, BCD	7 yrs	Total.

Offense	Discharge	Confinement	Forfeiture
Forcible Pandering	DD, BCD	12 yrs	Total.
Indecent Exposure	DD, BCD	1 yr	Total.''

(d) The following Note is inserted after Article 120c to read as follows:

''[**Note:** The Article 120, 120b, and 120c maximum punishments apply to offenses committed after 28 June 2012. *See* Appendices 23, 27, and 28.]''

(e) Article 125 is amended to read as follows:

''125 Forcible sodomy; bestiality

Offense	Discharge	Confinement	Forfeiture
Forcible sodomy	*Mandatory* DD [5]	Life [4]	Total.
Bestiality	DD, BCD	5 yrs	Total.''

(f) Article 134 abusing public animal is amended to read as follows:

''134 Animal abuse

Offense	Discharge	Confinement	Forfeiture
Abuse, neglect, or abandonment of an animal	BCD	1 yr	Total.
Abuse, neglect, or abandonment of a public animal	BCD	2yrs	Total.
Sexual act with an animal or cases where the accused caused the serious injury or death of the animal.	DD, BCD	5 yrs	Total.''

(g) Article 134 Assault with intent to commit voluntary manslaughter, robbery, sodomy, arson, or burglary is amended to read as follows:

Offense	Discharge	Confinement	Forfeiture
134 With intent to commit voluntary manslaughter, robbery, forcible sodomy, arson, or burglary.	DD, BCD	10 yrs	Total.''

(h) Article 134 Indecent conduct is inserted to read as follows:

Offense	Discharge	Confinement	Forfeiture
134 Indecent conduct	DD, BCD	5 yrs	Total.''

(i) The Notes are amended by adding note [5] after note [4].

'' [5]. A dishonorable discharge can be reduced to a bad-conduct discharge by the convening authority in accordance with a pretrial agreement.''

Section 2. Appendix 12A of the Manual for Courts-Martial, United States, is inserted to read as follows:

''APPENDIX 12A

LESSER INCLUDED OFFENSES

This chart was compiled for convenience purposes only and is not the ultimate authority for specific lesser included offenses. Lesser offenses are those which are necessarily included in the offense charged. *See* Article 79. Depending on the factual circumstances in each case, the offenses listed below may be considered lesser included. The elements of the proposed lesser included offense should be compared with the elements of the greater offense to determine if the elements of the lesser offense are derivative of the greater offense and vice versa. The ''elements test'' is the proper method for determining lesser included offenses. *See* Appendix 23.

Attempts to commit an offense may constitute a lesser included offense and are not listed. *See* Article 80.

Article	Offense	Lesser included offense
77	Principals	*See* Part IV, Para. 1.
78	Accessory after the fact	*See* Part IV, Para. 2.
79	Conviction of lesser included offenses	*See* Part IV, Para. 3.
80	Attempts	*See* Part IV, Para. 4.
81	Conspiracy	*See* Part IV, Para. 5.
82	Solicitation.	
83	Fraudulent enlistment, appointment, or separation.	
84	Effecting unlawful enlistment, appointment, or separation.	
85	Desertion	Art. 86.
86	Absence without leave.	

Article	Offense	Lesser included offense
87	Missing movement.	
	—*Design*	Art. 87 (*neglect*); Art. 86.
	—*Neglect*	Art. 86.
88	Contempt toward officials.	
89	Disrespect toward a superior commissioned officer	Art. 117.
90	Assaulting or willfully disobeying superior commissioned officer.	
	—*Striking superior commissioned officer in execution of office*	Art. 90 (*drawing or lifting up a weapon or offering violence to superior commissioned officer*); Art. 128 (*simple assault; assault consummated by a battery; assault with a dangerous weapon; assault or assault consummated by a battery upon commissioned officer not in the execution of office*).
	—*Drawing or lifting up a weapon or offering violence to superior commissioned officer in execution of office.*	Art. 128 (*simple assault; assault with a dangerous weapon; assault upon a commissioned officer not in the execution of office*).
	—*Willfully disobeying lawful order of superior commissioned officer.*	Art. 92; Art. 89.
91	Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer.	
	—*Striking or assaulting warrant, noncommissioned, or petty officer in the execution of office.*	Art. 128 (*simple assault; assault consummated by a battery; assault with a dangerous weapon; assault upon warrant, noncommissioned, or petty officer not in the execution of office*).
	—*Disobeying a warrant, noncommissioned, or petty officer*	Art. 92.
	—*Treating with contempt or being disrespectful in language or deportment toward warrant, noncommissioned, or petty officer in the execution of office.*	Art. 117.
92	Failure to obey order or regulation.	
93	Cruelty and maltreatment.	
94	Mutiny and sedition.	
	—*Mutiny by creating violence or disturbance*	Art. 90; Art. 116; Art. 128 (*simple assault*).
	—*Mutiny by refusing to obey orders or perform duties*	Art. 90 (*willful disobedience of commissioned officer*); Art. 91 (*willful disobedience of warrant, noncommissioned, or petty officer*); Art. 92.
	—*Sedition*	Art. 116; Art. 128 (*assault*).
95	Resistance, flight, breach of arrest, and escape.	
	—*Resisting apprehension*	Art. 128 (*simple assault; assault consummated by a battery*).
96	Releasing prisoner without proper authority.	
	—*Suffering a prisoner to escape through design*	Art. 96 (*neglect*).
97	Unlawful detention.	
98	Noncompliance with procedural rules.	
99	Misbehavior before the enemy.	
	—*Running away*	Art. 85 (*desertion with intent to avoid hazardous duty or important service*); Art. 86 (*absence without authority; going from appointed place of duty*).
	—*Endangering safety of a command, unit, place, ship, or military property.*	Art. 92.
	—*Casting away arms or ammunition*	Art. 108.
	—*Cowardly conduct*	Art. 85 (*desertion with intent to avoid hazardous duty or important service*); Art. 86; Art. 99 (*running away*).
	—*Quitting place of duty to plunder or pillage*	Art. 86 (*going from appointed place of duty*).
100	Subordinate compelling surrender.	
101	Improper use of a countersign.	
102	Forcing a safeguard.	
103	Captured or abandoned property.	
104	Aiding the enemy.	
105	Misconduct as a prisoner.	
106	Spies.	
106a	Espionage.	
107	False official statement.	
108	Military property of the United States—sale, loss, damage, destruction, or wrongful disposition.	
	—*Willfully damaging military property*	Art. 108 (*damaging military property through neglect*); Art. 109 (*willfully damaging non-military property*).
	—*Willfully suffering military property to be damaged*	Art. 108 (*through neglect suffering military property to be damaged*).
	—*Willfully destroying military property*	Art. 108 (*through neglect destroying military property; willfully damaging military property; through neglect damaging military property*); Art. 109 (*willfully destroying non-military property; willfully damaging non-military property*).
	—*Willfully suffering military property to be destroyed*	Art. 108 (*through neglect suffering military property to be destroyed; willfully suffering military property to be damaged; through neglect suffering military property to be damaged*).
	—*Willfully losing military property*	Art. 108 (*through neglect losing military property*).
	—*Willfully suffering military property to be lost*	Art. 108 (*through neglect suffering military property to be lost*).

Article	Offense	Lesser included offense
	—*Willfully suffering military property to be sold*	Art. 108 (*through neglect suffering military property to be sold*).
	—*Willfully suffering military property to be wrongfully disposed of.*	Art. 108 (*through neglect suffering military property to be wrongfully disposed of in the manner alleged*).
109	Property other than military property of the United States—waste, spoilage, or destruction.	
110	Improper hazarding of vessel.	
	—*Willfully and wrongfully hazarding a vessel*	Art. 110 (*negligently hazarding a vessel*).
	—*Willfully and wrongfully suffering a vessel to be hazarded*	Art. 110 (*negligently suffering a vessel to be hazarded*).
111	Drunken or reckless operation of vehicle, aircraft, or vessel.	
	—*Reckless, wanton, or impaired operation or physical control of a vessel.*	Art. 110.
	—*Drunken operation of a vehicle, vessel, or aircraft while drunk or with a blood or breath alcohol concentration in violation of the described per se standard.*	Art. 110; Art. 112.
112	Drunk on Duty.	
112a	Wrongful use, possession, etc., of controlled substances.	
	—*Wrongful use of controlled substance*	Art. 112a (*wrongful possession of controlled substance*).
	—*Wrongful manufacture of controlled substance*	Art. 112a (*wrongful possession of controlled substance*).
	—*Wrongful introduction of controlled substance*	Art. 112a (*wrongful possession of controlled substance*).
	—*Wrongful possession, manufacture, or introduction of a controlled substance with intent to distribute.*	Art. 112a (*wrongful possession, manufacture, or introduction of controlled substance*).
113	Misbehavior of sentinel or lookout.	
	—*Drunk on post*	Art. 112; Art. 92 (*dereliction of duty*).
	—*Sleeping on post*	Art. 92 (*dereliction of duty*).
	—*Leaving post*	Art. 92 (*dereliction of duty*); Art. 86 (*going from appointed place of duty*).
114	Dueling.	
115	Malingering.	
116	Riot or breach of peace.	
	—*Riot*	Art. 116 (*breach of peace*).
117	Provoking speeches or gestures.	
118	Murder.	
	—*Premeditated murder and murder during certain offenses*	Art. 118 (*intent to kill or inflict great bodily harm; act inherently dangerous to another*).
	—*All murders under Article 118*	Art. 119 (*involuntary manslaughter*); Art. 128 (*simple assault; assault consummated by a battery; aggravated assault*).
	—*Murder as defined in Article 118(1), (2), and (4)*	Art. 119 (*voluntary manslaughter*).
119	Manslaughter.	
	—*Voluntary manslaughter*	Art. 119 (*involuntary manslaughter*); Art. 128 (*simple assault; assault consummated by a battery; aggravated assault*).
	—*Involuntary manslaughter*	Art. 128 (*simple assault; assault consummated by a battery*).
119a	Death or injury of an unborn child.	
	—*Killing an unborn child*	Art. 119a (*injuring an unborn child*).
	—*Intentionally killing an unborn child*	Art. 119a (*killing an unborn child; injuring an unborn child*).
120 [1]	Rape and sexual assault generally.	
	—*Rape.*	
	—*By unlawful force*	Art. 120(b)(1)(B); Art. 120(c); Art. 120(d); Art. 128 (*simple assault; assault consummated by a battery*).
	—*By force causing or likely to cause death or grievous bodily harm to any person.*	Art. 120(a)(1); Art. 120(b)(1)(B); Art. 120(c); Art. 120(d); Art. 128 (*simple assault; assault consummated by a battery; assault with a dangerous weapon or other means or force likely to produce death or grievous bodily harm; assault intentionally inflicting grievous bodily harm*).
	—*By threatening or placing that other person in fear that any person would be subjected to death, grievous bodily harm, or kidnapping.*	Art. 120(b)(1)(B); Art. 120(c); Art. 120(d).
	—*By first rendering that other person unconscious*	Art. 120(b)(2); Art. 120(c); Art. 120(d).
	—*By administering to that person a drug, intoxicant, or other similar substance.*	Art. 120(c); Art. 128 (*simple assault; assault consummated by a battery*).
	—*Sexual Assault.*	
	—*By threatening or placing that other person in fear*	Art. 120(d).
	—*By causing bodily harm to that other person*	Art. 120(d); Art. 128 (*simple assault; assault consummated by a battery*).
	—*By making a fraudulent representation that the sexual act serves a professional purpose.*	Art. 120(d).
	—*Inducing a belief by any artifice, pretense, or concealment that the person is another person.*	Art. 120(d).
	—*Upon another person when the person knows or reasonably should know that the other person is asleep, unconscious, or otherwise unaware that the sexual act is occurring.*	Art. 120(d).
	—*When the other person is incapable of consenting*	Art. 120(d).
	—*Aggravated sexual contact.*	

Article	Offense	Lesser included offense
	—*By unlawful force*	Art. 120(d); Art. 128 (*simple assault; assault consummated by a battery*).
	—*By force causing or likely to cause death or grievous bodily harm to any person.*	Art. 120(d); Art. 128 (*simple assault; assault consummated by a battery*).
	—*By threatening or placing that other person in fear that any person would be subjected to death, grievous bodily harm, or kidnapping.*	Art. 120(d).
	—*By first rendering that person unconscious*	Art. 120(d); Art. 128 (*simple assault; assault consummated by a battery*).
	—*By administering to that person a drug, intoxicant, or other similar substance.*	Art. 120(d); Art. 128 (*simple assault; assault consummated by a battery*).
	—*Abusive sexual contact*	Art. 128 (*simple assault; assault consummated by a battery*).
120a	Stalking.	
120b	Rape and sexual assault of a child.	
	—*Rape of a child.*	
	—*Of a child who has not attained the age of 12*	Art. 120b(c); Art. 120c.
	—*By force of a child who has attained the age of 12*	Art. 120b(b); Art. 120b(c); Art. 128 (*assault consummated by a battery upon a child under 16 years*).
	—*By threatening or placing in fear a child who has attained the age of 12.*	Art. 120b(b); Art. 120b(c).
	—*By rendering unconscious a child who has attained the age of 12.*	Art. 120b(b); Art. 120b(c); Art. 128 (*assault consummated by a battery upon a child under 16 years*).
	—*By administering a drug, intoxicant, or other similar substance to a child who has attained the age of 12.*	Art. 120b(b); Art. 120b(c); Art. 128 (*assault consummated by a battery upon a child under 16 years*).
	—*Sexual assault of a child.*	
	—*Sexual assault of a child who has not attained the age of 12 involving contact between penis and vulva or anus or mouth.*	Art. 120b(c).
	—*Sexual assault of a child who has attained the age of 12 involving penetration of vulva or anus or mouth by any part of the body or any object.*	Art. 120b(c).
120c	Other sexual misconduct.	
121	Larceny and wrongful appropriation.	
	—*Larceny*	Art. 121 (*wrongful appropriation*).
	—*Larceny of military property*	Art. 121 (*wrongful appropriation; larceny of property other than military property*).
122	Robbery	Art. 121 (*larceny; wrongful appropriation*); Art. 128 (*simple assault; assault consummated by a battery; assault with a dangerous weapon; assault intentionally inflicting grievous bodily harm*)
123	Forgery.	
123a	Making, drawing, or uttering check, draft, or order without sufficient funds.	
124	Maiming	Art. 128 (*simple assault; assault consummated by a battery; assault with a dangerous weapon; assault intentionally inflicting grievous bodily harm*)
125	Forcible sodomy; bestiality.	
	—*Forcible sodomy*	Art. 128 (*simple assault; assault consummated by a battery*).
126	Arson.	
	—*Aggravated arson*	Art. 126 (*simple arson*).
127	Extortion.	
128	Assault.	
	—*Assault consummated by a battery*	Art. 128 (*simple assault).*
	—*Assault upon a commissioned, warrant, noncommissioned, or petty officer.*	Art. 128 (*simple assault; assault consummated by a battery*).
	—*Assault upon a sentinel or lookout in the execution of duty*	Art. 128 (*simple assault; assault consummated by a battery*).
	—*Assault consummated by a battery upon a child under 16 years.*	Art. 128 (*simple assault; assault consummated by a battery*).
	—*Assault with a dangerous weapon or other means of force likely to produce death or grievous bodily harm.*	Art. 128 (*simple assault; assault consummated by a battery; (when committed upon a child under the age of 16 years; assault consummated by a battery upon a child under the age of 16 years*)).
	—*Assault in which grievous bodily harm is intentionally inflicted.*	Art. 128 (*simple assault; assault consummated by a battery; assault with a dangerous weapon (when committed upon a child under the age of 16 years; assault consummated by a battery upon a child under the age of 16 years*)).
129	Burglary	Art. 130 (*housebreaking*).
130	Housebreaking.	
131	Perjury.	
132	Frauds against the United States.	
133	Conduct unbecoming an officer and a gentleman.	
134	Animal abuse.	
134	Adultery.	

Article	Offense	Lesser included offense
134	Assault—with intent to commit murder, voluntary manslaughter, rape, robbery, forcible sodomy, arson, burglary, or housebreaking.	
	—*Assault with intent to murder*	Art. 128 (*simple assault; assault consummated by a battery; assault with a dangerous weapon; assault intentionally inflicting grievous bodily harm*); Art. 134 (*assault with intent to commit voluntary manslaughter; willful or careless discharge of a firearm*).
	—*Assault with intent to commit voluntary manslaughter*	Art. 128 (*simple assault; assault consummated by a battery; assault with a dangerous weapon; assault intentionally inflicting grievous bodily harm*); Art. 134 (*willful or careless discharge of a firearm*).
	—*Assault with intent to commit rape or forcible sodomy*	Art. 128 (*simple assault; assault consummated by a battery; assault with a dangerous weapon*).
	—*Assault with intent to commit burglary*	Art. 128 (*simple assault; assault consummated by a battery; assault with a dangerous weapon*); Art. 134 (*assault with intent to commit housebreaking*).
	—*Assault with intent to commit robbery, arson, or housebreaking.*	Art. 128 (*simple assault; assault consummated by a battery; assault with a dangerous weapon*).
134	Bigamy.	
134	Bribery and graft.	
	—*Bribery*	Art. 134 (*graft*).
134	Burning with intent to defraud.	
134	Check, worthless, making and uttering—by dishonorably failing to maintain funds.	
134	Child endangerment.	
	—*Child endangerment by design*	Art. 134 (*child endangerment by culpable negligence*).
134	Child pornography.	
	—*Possessing child pornography with intent to distribute*	Art. 134 (*possessing child pornography*).
	—*Distributing child pornography*	Art. 134 (*possessing child pornography; possessing child pornography with intent to distribute*)
	—*Producing child pornography*	Art. 134 (*possessing child pornography*).
134	Cohabitation, wrongful.	
134	Correctional custody—offenses against.	
134	Debt, dishonorably failing to pay.	
134	Disloyal statements.	
134	Disorderly conduct, drunkenness.	
134	Drinking liquor with prisoner.	
134	Drunk prisoner.	
134	Drunkenness—incapacitation for performance of duties through prior wrongful indulgence in intoxicating liquor or any drug.	
134	False or unauthorized pass offenses.	
	—*Wrongful use or possession of false or unauthorized military or official pass, permit, discharge certificate, or identification card, with the intent to defraud or deceive.*	Art. 134 (*same offenses, except without the intent to defraud or deceive*).
134	False pretenses, obtaining services under.	
134	False swearing.	
134	Firearm, discharging—through negligence.	
134	Firearm, discharging—willfully, under such circumstances as to endanger human life.	Art. 134 (*firearm, discharging—through negligence*).
134	Fleeing scene of accident.	
134	Fraternization.	
134	Gambling with a subordinate.	
134	Homicide, negligent.	
134	Impersonating a commissioned, warrant, noncommissioned, or petty officer, or an agent or official.	
134	Indecent conduct.	
134	Indecent language	Art. 117 (*provoking speeches*).
134	Jumping from vessel into the water.	
134	Kidnapping.	
134	Mail: Taking, opening, secreting, destroying, or stealing	Art. 121.
134	Mails: Depositing or causing to be deposited obscene matters in.	
134	Misprision of serious offense.	
134	Obstructing justice.	
134	Wrongful interference with an adverse administrative proceeding.	
134	Pandering and prostitution.	
134	Parole, violation of.	
134	Perjury: Subornation of.	
134	Public record: Altering, concealing, removing, mutilating, obliterating, or destroying.	
134	Quarantine: Medical, breaking	Art. 134 (*breaking restriction*).

Article	Offense	Lesser included offense
134	Reckless endangerment.	
134	Restriction, breaking.	
134	Seizure: Destruction, removal, or disposal of property to prevent.	
134	Self-injury without intent to avoid service.	
134	Sentinel or lookout: Offenses against or by.	
134	Soliciting another to commit an offense.	
134	Stolen property: Knowingly receiving, buying, concealing.	
134	Straggling.	
134	Testify: Wrongful refusal.	
134	Threat or hoax designed or intended to cause panic or public fear.	
	—*Threat*	Art. 134 (*communicating a threat*); Art. 128 (*assault*).
134	Threat, communicating.	
134	Unlawful entry.	
134	Weapon: Concealed, carrying.	
134	Wearing unauthorized insignia, decoration, badge, ribbon, device or lapel button''.	

[1] This chart only includes the 2012 version of Art. 120. *See* Appendix 27 and 28 for prior versions.

Section 3. The Discussion to Part I of the Manual for Courts-Martial, United States, is amended as follows:

(a) The Discussion immediately following paragraph 4 is amended to read as follows:

''The Department of Defense, in conjunction with the Department of Homeland Security, has published supplementary materials to accompany the Manual for Courts-Martial. These materials consist of a Discussion (accompanying the Preamble, the Rules for Courts-Martial, the Military Rules of Evidence, and the Punitive Articles), an Analysis, and various appendices. These supplementary materials do not constitute the official views of the Department of Defense, the Department of Homeland Security, the Department of Justice, the military departments, the United States Court of Appeals for the Armed Forces, or any other authority of the Government of the United States, and they do not constitute rules. *Cf., e.g.,* 5 U.S.C. 551(4). The supplementary materials do not create rights or responsibilities that are binding on any person, party, or other entity (including any authority of the Government of the United States whether or not included in the definition of ''agency'' in 5 U.S.C. 551(1)). Failure to comply with matter set forth in the supplementary materials does not, of itself, constitute error, although these materials may refer to requirements in the rules set forth in the Executive Order or established by other legal authorities (for example, binding judicial precedents applicable to courts-martial) that are based on sources of authority independent of the supplementary materials. *See* Appendix 21 in this Manual.

The 1995 amendment to paragraph 4 of the Preamble eliminated the practice of identifying the Manual for Courts-Martial, United States, by a particular year. Historically the Manual had been published in its entirety sporadically (*e.g.,* 1917, 1921, 1928, 1949, 1951, 1969, and 1984) with amendments to it published piecemeal. It was therefore logical to identify the Manual by the calendar year of publication, with periodic amendments identified as ''Changes'' to the Manual. Beginning in 1995, however, a new edition of the Manual was published in its entirety and a new naming convention was adopted. *See* Exec. Order No. 12960 of May 12, 1995. Beginning in 1995, the Manual was to be referred to as ''Manual for Courts-Martial, United States (19xx edition).'' In 2013, the Preamble was amended to identify new Manuals based on their publication date.

Amendments made to the Manual can be researched in the relevant Executive Order as referenced in Appendix 25. Although the Executive Orders were removed from Appendix 25 of the Manual in 2012 to reduce printing requirements, they can be accessed online. *See* Appendix 25.

Section 4. The Discussion to Part II of the Manual for Courts-Martial, United States, is amended as follows:

(a) The Discussion immediately following R.C.M. 307(c)(3) is amended by deleting the first two Notes.

(b) The Discussion immediately following R.C.M. 307(c)(3) is amended by inserting the words ''For Article 134 offenses, also refer to paragraph 60c(6) in Part IV.'' after the words ''How to draft specifications.''

(c) The Discussion immediately following R.C.M. 307(c)(3) is amended by deleting the Note directly following the words ''(G) *Description of offense.*''

(d) Part (G)(i) in the Discussion immediately following R.C.M. 307(c)(3) is amended to read as follows:

''(i) *Elements.* The elements of the offense must be alleged, either expressly or by necessary implication, except that Article 134 specifications must expressly allege the terminal element. *See* paragraph 60.c.(6) in Part IV. If a specific intent, knowledge, or state of mind is an element of the offense, it must be alleged.''

(e) Part (G)(v) in the Discussion immediately following R.C.M. 307(c)(3) is inserted to read as follows:

''(v) *Lesser Included Offenses.* The elements of the contemplated lesser included offense should be compared with the elements of the greater offense to determine if the elements of the lesser offense are derivative of the greater offense and vice versa. *See* discussion following paragraph 3.b.(1)(c) in Part IV and the related analysis in Appendix 23.''

(f) The note immediately following R.C.M. 307(c)(4) is deleted and Discussion is inserted to read as follows:

''The prohibition against unreasonable multiplication of charges addresses those features of military law that increase the potential for overreaching in the exercise of prosecutorial discretion. It is based on reasonableness, and has no foundation in Constitutional rights. To determine if charges are unreasonably multiplied, see R.C.M. 906(b)(12). Because prosecutors are free to charge in the alternative, it may be reasonable to charge two or more offenses that arise from one transaction if sufficient doubt exists as to the facts or the law. In no case should both an offense and a lesser included offense thereof be separately charged. See also Part IV, paragraph 3, and R.C.M. 601(e)(2) concerning referral of several offenses.''

(g) The Discussion immediately following R.C.M. 701(e) is amended by

adding the following after ''retribution for such testimony'':

''Counsel must remain cognizant of professional responsibility rules regarding communicating with represented persons.''

(h) The Discussion immediately following R.C.M. 809(a) is amended to read as follows:

''Article 48 makes punishable ''direct'' contempt, as well as ''indirect'' or ''constructive'' contempt. ''Direct'' contempt is that which is committed in the presence of the court-martial or its immediate proximity. ''Presence'' includes those places outside the courtroom itself, such as waiting areas, deliberation rooms, and other places set aside for the use of the court-martial while it is in session. ''Indirect'' or ''constructive'' contempt is non-compliance with lawful writs, processes, orders, rules, decrees, or commands of the court-martial. A ''direct'' or ''indirect'' contempt may be actually seen or heard by the court-martial, in which case it may be punished summarily. *See* subsection (b)(1) of this Rule. A ''direct'' or ''indirect'' contempt may also be a contempt not actually observed by the court-martial, for example, when an unseen person makes loud noises, whether inside or outside the courtroom, which impede the orderly progress of the proceedings. In such a case the procedures for punishing contempt are more extensive. *See* subsection (b)(2) of this Rule.

The words ''any person,'' as used in Article 48, include all persons, whether or not subject to military law, except the military judge and foreign nationals outside the territorial limits of the United States who are not subject to the code. The military judge may order the offender removed whether or not contempt proceedings are held. It may be appropriate to warn a person whose conduct is improper that persistence in a course of behavior may result in removal or punishment for contempt. *See* R.C.M. 804, 806.

Each finding of contempt may be separately punished.

A person subject to the code who commits contempt may be tried by court-martial or otherwise disciplined under Article 134 for such misconduct in addition to or instead of punishment for contempt. *See* paragraph 108, Part IV; s*ee also* Article 98. The 2011 amendment of Article 48 expanded the contempt power of military courts to enable them to enforce orders, such as discovery orders or protective orders regarding evidence, against military or civilian attorneys. Persons not subject to military jurisdiction under Article 2, having been duly subpoenaed, may be prosecuted in Federal civilian court under Article 47 for neglect or refusal to appear or refusal to qualify as a witness or to testify or to produce evidence.''

(i) The Discussion immediately following R.C.M. 906(b)(5) is amended to read as follows:

''Each specification may state only one offense. R.C.M. 307(c)(4). A duplicitous specification is one which alleges two or more separate offenses. Lesser included offenses (*see* paragraph 3, Part IV) are not separate, nor is a continuing offense involving separate acts. The sole remedy for a duplicitous specification is severance of the specification into two or more specifications, each of which alleges a separate offense contained in the duplicitous specification. However, if the duplicitousness is combined with or results in other defects, such as misleading the accused, other remedies may be appropriate. See subsection (b)(3) of this rule. *See also* R.C.M. 907(b)(3).''

(j) The Discussion immediately following R.C.M. 906(b)(12) is amended to read as follows:

''Unreasonable multiplication of charges as applied to findings and sentence is a limitation on the military's discretion to charge separate offenses and does not have a foundation in the Constitution. The concept is based on reasonableness and the prohibition against prosecutorial overreaching. In contrast, multiplicity is grounded in the Double Jeopardy Clause of the Fifth Amendment. It prevents an accused from being twice punished for one offense if it is contrary to the intent of Congress. *See* R.C.M. 907(b)(3). Therefore, a motion for relief from unreasonable multiplication of charges as applied to findings and sentence differs from a motion to dismiss on the grounds of multiplicity.

The following non-exhaustive factors should be considered when determining whether two or more offenses are unreasonably multiplied: whether the specifications are aimed at distinctly separate criminal acts; whether they represent or exaggerate the accused's criminality; whether they unreasonably increase his or her exposure to punishment; and whether they suggest prosecutorial abuse of discretion in drafting of the specifications. Because prosecutors are permitted to charge in the alternative based on exigencies of proof, a ruling on this motion ordinarily should be deferred until after findings are entered.''

(k) The Discussion immediately following R.C.M. 907(b)(3) is amended to read as follows:

''Multiplicity is a legal concept, arising from the Double Jeopardy Clause of the Fifth Amendment, which provides that no person shall be put in jeopardy twice for the same offense. Absent legislative intent to the contrary, an accused cannot be convicted and punished for violations of two or more statutes if those violations arise from a single act. Where Congress intended to impose multiple punishments for the same act, imposition of such sentence does not violate the Constitution.

Multiplicity differs from unreasonable multiplication of charges. If two offenses are not multiplicious, they nonetheless may constitute an unreasonable multiplication of charges as applied to findings or sentence. *See* R.C.M. 906(b)(12). Unreasonable multiplication of charges is a limitation on the military's discretion to charge separate offenses. It does not have a foundation in the Constitution; it is based on reasonableness and the prohibition against prosecutorial overreaching. The military judge is to determine, in his or her discretion, whether the charges constitute unreasonable multiplication of charges as applied to findings or sentencing. *See* R.C.M. 906(b)(12).

To determine if two charges are multiplicious, the practitioner should first determine whether they are based on separate acts. If so, the charges are not multiplicious because separate acts may be charged and punished separately. If the charges are based upon a single act, the practitioner should next determine if Congress intended to impose multiple convictions and punishments for the same act. When there is no overt expression of congressional intent in the relevant statutes, such intent may be inferred based on the elements of the charged statutes and their relationship to each other or other principles of statutory interpretation. If each statute contains an element not contained in the other, it may be inferred that Congress intended they be charged and punished separately. Likewise, if each statute contains the same elements, it may be inferred that Congress did not intend they be charged and punished separately. A lesser included offense will always be multiplicious if charged separately, but offenses do not have to be lesser included to be multiplicious.

Ordinarily, a specification should not be dismissed for multiplicity before trial. The less serious of any multiplicious specifications shall be dismissed after findings have been reached. Due consideration must be given, however, to possible post-trial or

appellate action with regard to the remaining specification.''

(l) The Discussion immediately following R.C.M. 910(a)(1) is amended to read as follows:

''*See* paragraph 3, Part IV, concerning lesser included offenses. When the plea is to a lesser included offense without the use of exceptions and substitutions, the defense counsel should provide a written revised specification to be included in the record as an appellate exhibit.

A plea of guilty to a lesser included offense does not bar the prosecution from proceeding on the offense as charged. *See also* subsection (g) of this rule.

A plea of guilty does not prevent the introduction of evidence, either in support of the factual basis for the plea, or, after findings are entered, in aggravation. *See* R.C.M. 1001(b)(4).''

(m) The Discussion immediately following R.C.M. 916(j)(2) is amended to read as follows:

''Examples of ignorance or mistake which need only exist in fact include: ignorance of the fact that the person assaulted was an officer; belief that property allegedly stolen belonged to the accused; belief that a controlled substance was really sugar.

Examples of ignorance or mistake which must be reasonable as well as actual include: belief that the accused charged with unauthorized absence had permission to go; belief that the accused had a medical ''profile'' excusing shaving as otherwise required by regulation. Some offenses require special standards of conduct (*see,* for example, paragraph 68, Part IV, Dishonorable failure to maintain sufficient funds); the element of reasonableness must be applied in accordance with the standards imposed by such offenses.

Examples of offenses in which the accused's intent or knowledge is immaterial include: Any rape of a child, or any sexual assault or sexual abuse of a child when the child is under 12 years old. However, such ignorance or mistake may be relevant in extenuation and mitigation.

See subsection (l)(1) of this rule concerning ignorance or mistake of law.''

(n) The Discussion immediately following R.C.M. 918(a)(1) is amended to read as follows:

''*Exceptions and Substitutions.* One or more words or figures may be excepted from a specification and, when necessary, others substituted, if the remaining language of the specification, with or without substitutions, states an offense by the accused which is punishable by the court-martial. Changing the date or place of the offense may, but does not necessarily, change the nature or identity of an offense.

If A and B are joint accused and A is convicted but B is acquitted of an offense charged, A should be found guilty by excepting the name of B from the specification as well as any other words indicating the offense was a joint one.

Lesser Included Offenses. If the evidence fails to prove the offense charged but does prove an offense necessarily included in the offense charged, the fact finder may find the accused not guilty of the offense charged but guilty of the lesser included offense. *See* paragraph 3 of Part IV concerning lesser included offenses.

Offenses arising from the same act or transaction. The accused may be found guilty of two or more offenses arising from the same act or transaction, whether or not the offenses are separately punishable. *But see* R.C.M. 906(b)(12); 907(b)(3)(B); 1003(c)(1)(C).''

(o) The note immediately following R.C.M. 1003(c)(1)(C) is deleted, and the following is added immediately following the last paragraph of the Discussion:

''Multiplicity is addressed in R.C.M. 907(b)(3)(B). Unreasonable multiplication of charges is addressed in R.C.M. 906(b)(12).''

Section 5. The Discussion to Part IV of the Manual for Courts-Martial, United States, is amended as follows:

(a) The Discussion immediately following paragraph 3.b.(1)(c) is amended to read as follows:

''The ''elements test'' is the proper method for determining lesser included offenses. *See United States* v. *Jones,* 68 M.J. 465 (C.A.A.F. 2010); *Schmuck* v. *United States,* 489 U.S. 705 (1989); Appendix 23 of this Manual, Art. 79. Paragraph 3.b.(1) was amended to comport with the elements test, which requires that the elements of the lesser offense must be a subset of the elements of the charged offense. The elements test does not require identical statutory language, and use of normal principles of statutory interpretation is permitted. The elements test is necessary to safeguard the due process requirement of notice to a criminal defendant.''

(b) The following Discussion is added immediately after paragraph 3.b.(5):

''Practitioners must consider lesser included offenses on a case-by-case basis. *See United States* v. *Jones,* 68 M.J. 465 (C.A.A.F. 2010); *United States* v. *Alston,* 69 M.J. 214 (C.A.A.F. 2010); discussion following paragraph 3.b.(1)(c) above. The lesser included offenses listed in Appendix 12A were amended in 2016 to comport with the elements test; however, practitioners must analyze each lesser included offense on a case-by-case basis. *See* Appendix 23 of this Manual, Article 79.''

(c) The following Discussion is added immediately after paragraph 60.b:

''The terminal element is merely the expression of one of the clauses under Article 134. See paragraph c below for an explanation of the clauses and rules for drafting specifications. More than one clause may be alleged and proven; however, proof of only one clause will satisfy the terminal element. For clause 3 offenses, the military judge may judicially notice whether an offense is capital. *See* Mil. R. Evid. 202.''

(d) The following Discussion is added immediately after paragraph 60.c.(6)(a):

''Clauses 1 and 2 are theories of liability that must be expressly alleged in a specification so that the accused will be given notice as to which clause or clauses to defend against. The words ''to the prejudice of good order and discipline in the armed forces'' encompass both paragraph c.(2)(a), prejudice to good order and discipline, and paragraph c.(2)(b), breach of custom of the Service. A generic sample specification is provided below:

''*In that _____, (personal jurisdiction data), did (at/on board location), on or about ____ 20____, (commit elements of Article 134 clause 1 or 2 offense), and that said conduct (was to the prejudice of good order and discipline in the armed forces) (and) (was of a nature to bring discredit upon the armed forces).*''

If clauses 1 and 2 are alleged together in the terminal element, the word ''and'' should be used to separate them. Any clause not proven beyond a reasonable doubt should be excepted from the specification at findings. *See* R.C.M. 918(a)(1). *See also* Appendix 23 of this Manual, Art. 79. Although using the conjunctive ''and'' to connect the two theories of liability is recommended, a specification connecting the two theories with the disjunctive ''or'' is sufficient to provide the accused reasonable notice of the charge against him. *See* Appendix 23 of this Manual, Art. 134.''

(e) The following replaces the paragraph below ''Discussion'' following paragraph 60.c.(6)(b):

''The words ''an offense not capital'' are sufficient to provide notice to the accused that a clause 3 offense has been charged and are meant to include all crimes and offenses not capital. A generic sample specification for clause 3 offenses is provided below:

''*In that _____, (personal jurisdiction data), did (at/on board location), on or about ____ 20____, (commit: address each element), an offense not capital, in violation of (name or citation of statute).*''

In addition to alleging each element of the federal statute, practitioners should consider including, when appropriate and necessary, words of criminality (*e.g.,* wrongfully, knowingly, or willfully).''

Section 6. Appendix 21 of the Manual for Courts-Martial, United States, is amended as follows:

(a) R.C.M. 306, the last paragraph beginning with ''*2016 Amendment,*'' is amended to read as follows:

''*2016 Amendment:* R.C.M. 306(e) implements Section 534(b) of the National Defense Authorization Act for Fiscal Year 2015, P.L. 113–291, 19 December 2014.''

(b) R.C.M. 307(c)(3), after the paragraph beginning with the words, ''2012 Amendment,'' and prior to the line beginning with the words, ''The sources of the lettered subsection'' add the following:

''*2016 Amendment:* The two notes added in 2012 are removed. The notes were originally added to address the requirement to expressly state the terminal element in specifications under Article 134 and to address lesser included offenses. *See United States* v. *Ballan,* 71 M.J. 28 (C.A.A.F. 2012); *United States* v. *Fosler,* 70 M.J. 225 (C.A.A.F. 2011); *United States* v. *Jones,* 68 M.J. 465 (C.A.A.F. 2010). In 2016, the Manual was amended to require the terminal element be expressed in Article 134 specifications and to alter the definition of lesser included offenses under Article 79. *See* paragraphs 3 and 60.c.(6) in Part IV of this Manual.''

(c) R.C.M. 307(c)(3)(A), after the paragraph beginning with the words ''*Sample specifications*'' delete the paragraph beginning with the words the ''*2012 Amendment.*''

(d) R.C.M. 307(c)(3)(G), after the paragraph beginning with the words ''*Description of offense.*'' delete the paragraph beginning with the words the ''*2012 Amendment,*'' and insert in its place:

''*2016 Amendment:* The note added in 2012 is removed. The note was originally added to address the requirement to expressly state the terminal element in Article 134 specifications. *See United States* v. *Ballan,* 71 M.J. 28 (C.A.A.F. 2012); *United States* v. *Fosler,* 70 M.J. 225 (C.A.A.F. 2011).''

(e) R.C.M. 307(c)(3)(G)(i), insert the following language as a new paragraph after the existing paragraph:

''*2016 Amendment:* This subparagraph was amended and reflects the removal of a note.''

(f) R.C.M. 307(c)(3)(G)(v), insert the following language:

''*2016 Amendment:* Subparagraph (v) was added to address lesser included offenses and refer practitioners to Article 79 and new Appendix 12A. *See* paragraph 3 in Part IV and Appendix 12A.''

(g) R.C.M. 307(c)(4), after the paragraph beginning with the words ''*2005 Amendment*'' delete the paragraph beginning with the words the ''*2012 Amendment,*'' and insert in its place:

''*2016 Amendment:* The discussion section was added to R.C.M. 307(c)(4) to clarify the ambiguity between the two distinct concepts of multiplicity and unreasonable multiplication of charges. For analysis related to multiplicity, see R.C.M. 907(b)(3)(B) in this Appendix. For analysis related to unreasonable multiplication of charges, see R.C.M. 906(b)(12) in this Appendix.

Nothing in the rule or the discussion section should be construed to imply that it would be overreaching for a prosecutor to bring several charges against an accused for what essentially amounts to one transaction if there is a valid legal reason to do so. For example, prosecutors may charge two offenses for exigencies of proof, which is a long accepted practice in military law. *See, e.g., United States* v. *Morton,* 69 M.J. 12 (C.A.A.F. 2010). The discussion section emphasizes that a prosecutor is not overreaching or abusing his or her discretion merely because he or she charges what is essentially one act under several different charges or specifications.

The language in the discussion section of the 2012 edition of the Manual referring to *United States* v. *Campbell,* 71 M.J. 19 (C.A.A.F. 2012), was removed because it is no longer necessary, as the rules themselves have been edited to remove any reference to ''multiplicious for sentencing.'' The example was removed from the discussion section because it overly generalized the concept of unreasonable multiplication of charges.''

(h) R.C.M. 701(e), after the paragraph beginning with the words, ''*1986 Amendment,*'' and immediately before subparagraph (f), insert the following language:

''*2016 Amendment:* This rule implements Article 46(b), enacted by section 1704 of the National Defense Authorization Act for Fiscal Year 2014, P.L. 113–66, 26 December 2013, as amended by section 531(b) of the Carl Levin and Howard P. ''Buck'' McKeon National Defense Authorization Act for Fiscal Year 2015, P.L. 113–291, 19 December 2014.''

(i) R.C.M. 906(b)(12), delete the paragraph beginning with the words the ''2012 Amendment,'' and insert in its place:

''*2016 Amendment:* This rule and related discussion is the focal point for addressing unreasonable multiplication of charges. If a practitioner seeks to raise a claim for multiplicity, that concept is addressed in R.C.M. 907(b)(3)(B) and related discussion. This rule has been amended. The Court of Appeals for the Armed Forces has recognized that practitioners and the courts have routinely confused the concepts of multiplicity and unreasonable multiplication of charges. *See, e.g., United States* v. *Campbell,* 71 M.J. 19, 23 (C.A.A.F. 2012) (''the terms multiplicity, multiplicity for sentencing, and unreasonable multiplication of charges in military practice are sometimes used interchangeably as well as with uncertain definition''); *United States* v. *Baker,* 14 M.J. 361, 372 (C.M.A. 1983) (Cook, J. dissenting) (''[t]hat multiplicity for sentencing is a mess in the military justice system is a proposition with which I believe few people familiar with our system would take issue'').

Multiplicity and unreasonable multiplication of charges are two distinct concepts. Unreasonable multiplication of charges as applied to findings and sentence is a limitation on the prosecution's discretion to charge separate offenses. Unreasonable multiplication of charges does not have a foundation in the Constitution but is instead based on the concept of reasonableness and is a prohibition against prosecutorial overreaching. In contrast, multiplicity is based on the Double Jeopardy Clause of the Fifth Amendment and prevents an accused from being twice punished for one offense if it is contrary to the intent of Congress. A charge may be found not to be multiplicious but at the same time it may be dismissed because of unreasonable multiplication. *See United States* v. *Quiroz,* 55 M.J. 334, 337–38 (C.A.A.F. 2001).

Use of the term ''multiplicity (or multiplicious) for sentencing'' is inappropriate. If a charge is multiplicious, meaning that it violates the Constitutional prohibition against Double Jeopardy, it necessarily results in dismissal of the multiplied offenses, therefore obviating any issue on sentencing with respect to that charge. *Campbell,* 71 M.J. at 23. A charge should not be found multiplicious for sentencing but not for findings. Thus,

the more appropriate term for the military judge's discretionary review of the charges at sentencing is ''unreasonable multiplication of charges as applied to sentence.'' *Id.* at 24. The rule was changed to remove ''multiplicity for sentencing'' from the Manual, eliminating confusion and misuse.

Subparagraphs (i) and (ii) were added to the rule. They clarify the distinction between unreasonable multiplication of charges as applied to findings and to sentence. Although these concepts have existed for years (*see* Michael J. Breslin & LeEllen Coacher, *Multiplicity and Unreasonable Multiplication of Charges: A Guide to the Perplexed,* 45 A.F. L. Rev. 99 (1998) for a history of the terms), they were not defined in previous editions of the Manual. The definitions were adopted from *Quiroz, Campbell,* and recommendations from Christopher S. Morgan, *Multiplicity: Reconciling the Manual for Courts-Martial,* 63 A.F. L. Rev. 23 (2009). It is possible that two offenses are not unreasonably multiplied for findings but are so for sentencing; these additions explain how this can be so. *See, e.g., Campbell,* 71 M.J. at 25 (military judge did not abuse his discretion by finding that there was not an unreasonable multiplication of charges as applied to findings but that there was an unreasonable multiplication of charges as applied to sentence).

The discussion sections were added to address concerns that CAAF voiced in dicta in *Campbell.* In previous editions of the Manual, military judges often used the discussion section in R.C.M. 1003(c)(1) to determine when relief was warranted for unreasonable multiplication of charges as applied to sentence. The *Campbell* court stated in a footnote: ''It is our view that after *Quiroz,* the language in the Discussion to R.C.M. 1003(c)(1)(C) regarding 'a single impulse or intent,' is dated and too restrictive. The better approach is to allow the military judge, in his or her discretion, to merge the offense for sentencing purposes by considering the *Quiroz* factors and any other relevant factor. . . .'' *Campbell,* 71 M.J. at 24 n.9. The Discussion was changed to address the *Quiroz* factors and remove any reference to the ''single impulse or intent'' test, as suggested by CAAF. The committee also decided to move the Discussion section from R.C.M. 1003(b)(8)(C) to this rule because R.C.M. 1003 deals exclusively with sentencing and a motion for appropriate relief due to unreasonable multiplication of charges can be raised as an issue for findings or for sentence under this Rule. Therefore, it is more appropriate to address the issue here.

For more information on multiplicity and how it relates to unreasonable multiplication of charges, see Michael J. Breslin & LeEllen Coacher, *Multiplicity and Unreasonable Multiplication of Charges: A Guide to the Perplexed,* 45 A.F. L. Rev. 99 (1998); Christopher S. Morgan, *Multiplicity: Reconciling the Manual for Courts-Martial,* 63 A.F. L. Rev. 23 (2009); Gary E. Felicetti, *Surviving the Multiplicty/LIO Family Vortex,* Army Law., Feb. 2011, at 46.

The language in the discussion section of the 2012 edition of the Manual referring to the *Campbell* decision was removed because it is no longer necessary, as the rules themselves have been edited to remove any reference to ''multiplicious for sentencing'' and additional discussion sections were added to eliminate any confusion with the terms.''

(j) R.C.M. 907(b)(3)(B), insert the following language as a new paragraph after the existing paragraph:

''*2016 Amendment:* This rule and related discussion is the focal point for addressing claims of multiplicity. If a practitioner seeks to raise a claim for unreasonable multiplication of charges, that concept is addressed in R.C.M. 906(b)(12) and related discussion. The heading of this rule, which was added in 2016, signifies that this rule deals exclusively with multiplicity, and not unreasonable multiplication of charges. The discussion section of this rule was amended because the committee believed that a more thorough definition of multiplicity was appropriate in light of CAAF's suggestion in *United States* v. *Campbell,* 71 M.J. 19, 23 (C.A.A.F. 2012), that the concepts of multiplicity and unreasonable multiplication of charges are often confounded.

The discussion of multiplicity is derived from the Supreme Court's holding in *Blockburger* v. *United States,* 284 U.S. 299 (1932), and CMA's holding in *United States* v. *Teters,* 37 M.J. 370 (C.M.A. 1993). The Court in *Blockburger* wrote: ''[W]here the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not.'' *Blockburger,* 284 U.S. at 304. Military courts departed from the *Blockburger* analysis; however, the CMA's decision in *Teters* clearly re-aligned the military courts with the federal courts, and multiplicity is now determined in the military courts by the *Blockburger/Teters* analysis outlined in the discussion section. Any reference to the ''single impulse'' or ''fairly embraced'' tests is outdated and should be avoided.

Two offenses that arise from the same transaction may not be multiplicious, even if each does not require proof of an element not required to prove the other, if the intent of Congress was that an accused could be convicted of and punished for both offenses arising out of the same act. The *Blockburger/Teters* analysis applies only when Congress did not intend that the offenses be treated as separate. If Congress intended to subject an accused to multiple punishments for the same transaction, and that intent is clear, the *Blockburger/Teters* elements comparison is unnecessary. *See, e.g., Missouri* v. *Hunter,* 459 U.S. 359, 368–69 (1983) (''[S]imply because two criminal statutes may be construed to proscribe the same conduct under the *Blockburger* test does not mean that the Double Jeopardy Clause precludes the imposition, in a single trial, of cumulative punishments pursuant to those statutes. . . . Where . . . a legislature specifically authorizes cumulative punishment under two statutes, regardless of whether those two statutes proscribe the 'same' conduct under *Blockburger,* a court's task of statutory construction is at an end and the prosecutor may seek and the trial court or jury may impose cumulative punishment under such statutes in a single trial.'').

The language in the discussion section of the 2012 edition of the Manual referring to the *Campbell* decision was removed because it is no longer necessary, as the Rules themselves have been edited to remove any reference to ''multiplicious for sentencing'' and additional discussion sections were added to eliminate any confusion with the terms.''

(k) R.C.M. 916(b), insert the following language immediately following the paragraph beginning with the words ''*2007 Amendment*'*:*

''*2016 Amendment:* Changes to this paragraph are based on section 541 of the National Defense Authorization Act for Fiscal Year 2012, P.L. 112–81, 31 December 2011, which superseded the previous paragraph 45, ''Rape, sexual assault and other sexual misconduct,'' in its entirety and replaces paragraph 45 with ''Rape and sexual assault generally.'' In addition, the National Defense Authorization Act for Fiscal Year 2012 added paragraph 45b, ''Rape and sexual assault of a child,'' and paragraph 45c, ''Other sexual misconduct.''

(l) R.C.M. 916(j), insert the following language immediately following the

paragraph beginning with the words ''*2007 Amendment*'':

''*2016 Amendment:* Changes to this paragraph are based on section 541 of the National Defense Authorization Act for Fiscal Year 2012, P.L. 112–81, 31 December 2011, which superseded the previous paragraph 45, ''Rape, sexual assault and other sexual misconduct,'' in its entirety and replaces paragraph 45 with ''Rape and sexual assault generally.'' In addition, the National Defense Authorization Act for Fiscal Year 2012 added paragraph 45b, ''Rape and sexual assault of a child,'' and paragraph 45c, ''Other sexual misconduct.''

Paragraph (j)(3) was deleted. The rule reflects changes to Article 120. The Court of Appeals for the Armed Forces ruled that the statutory burden shift to the accused in the 2007 version of Article 120 was unconstitutional and the subsequent burden shift to the government to disprove consent beyond a reasonable doubt once the accused had raised the affirmative defense of consent by a preponderance of the evidence resulted in a legal impossibility. *United States* v. *Prather,* 69 M.J. 338 (C.A.A.F. 2011); *United States* v. *Medina,* 69 M.J. 462 (C.A.A.F. 2011).''

(m) R.C.M. 920(e)(5)(D), insert the following language immediately following the paragraph beginning with the words ''*2007 Amendment*'':

''*2016 Amendment:* Changes to this paragraph are based on section 541 of the National Defense Authorization Act for Fiscal Year 2012, P.L. 112–81, 31 December 2011, which superseded the previous paragraph 45, ''Rape, sexual assault and other sexual misconduct,'' in its entirety and replaces paragraph 45 with ''Rape and sexual assault generally.'' In addition, the National Defense Authorization Act for Fiscal Year 2012 added paragraph 45b, ''Rape and sexual assault of a child,'' and paragraph 45c, ''Other sexual misconduct.'' ''

(n) R.C.M. 1003(c)(1)(C), delete the paragraph beginning with the words the ''2012 Amendment'' and insert in its place:

''*2016 Amendment:* This rule was amended. The language in previous editions of the Manual seemed to suggest that an accused could not be punished for offenses that were not separate. This is true only if there is no express statement from Congress indicating that an accused can be punished for two or more offenses that are not separate. *See* R.C.M. 907(b)(3) and related analysis. Subsections (i) and (ii) were added to distinguish between claims of multiplicity and unreasonable multiplication of charges. As the two concepts are distinct, it is important to address them in separate subsections. *See* R.C.M. 906(b)(12) for claims of unreasonable multiplication of charges and R.C.M. 907(b)(3)(B) for claims of multiplicity.

Additionally, the committee decided to move the discussion of the factors in *United States* v. *Quiroz,* 55 M.J. 334 (C.A.A.F. 2001), from this rule to R.C.M. 906(b)(12) because the factors apply to unreasonable multiplication of charges as applied to findings as well as sentence. Because this Rule refers only to sentencing, it is more appropriate to address the military judge's determination of unreasonable multiplication in R.C.M. 906(b)(12), because that Rule covers both findings and sentence. *See* R.C.M. 906(b)(12) and related analysis.

The language in the discussion section of the 2012 edition of the Manual referring to the *Campbell* decision was removed. Such language is no longer necessary, as the Rules themselves have been edited to remove any reference to ''multiplicious for sentencing'' and the discussion section of R.C.M. 906(b)(12) addresses the *Quiroz* factors.''

(o) R.C.M. 1004(c)(7)(B), insert the following language immediately following the paragraph beginning with the words ''*1994 Amendment*'' and immediately prior to the paragraph beginning with the words ''*1986 Amendment*'':

''*2016 Amendment:* Changes to this paragraph reflect section 541 of the National Defense Authorization Act for Fiscal Year 2012, P.L. 112–81, 31 December 2011, which superseded the previous paragraph 45, ''Rape, sexual assault and other sexual misconduct,'' in its entirety and replaces paragraph 45 with ''Rape and sexual assault generally.'' In addition, the National Defense Authorization Act for Fiscal Year 2012 added paragraph 45b, ''Rape and sexual assault of a child,'' and paragraph 45c, ''Other sexual misconduct.'' ''

(p) R.C.M. 1004(c)(8), insert the following language immediately following the paragraph beginning with the words ''*1991 Amendment*'':

''*2016 Amendment:* Changes to this paragraph reflect section 541 of the National Defense Authorization Act for Fiscal Year 2012, P.L. 112–81, 31 December 2011, which superseded the previous paragraph 45, ''Rape, sexual assault and other sexual misconduct,'' in its entirety and replaces paragraph 45 with ''Rape and sexual assault generally.'' In addition, the National Defense Authorization Act for Fiscal Year 2012 added paragraph 45b, ''Rape and sexual assault of a child,'' and paragraph 45c, ''Other sexual misconduct.'' ''

Section 7. Appendix 23 of the Manual for Courts-Martial, United States, is amended as follows:

(a) Paragraph 3.b.(4), Article 79, Lesser included offenses, *Specific lesser included offenses,* is amended by deleting the paragraphs beginning with the words ''*2012 Amendment*'' and ending with ''(C.A.A.F. 2008).'' and inserting in their place:

''*2016 Amendment:* See analysis in paragraph 3.b.(1) above. Lesser included offenses (LIO) listings were removed from each punitive article in paragraphs 1–113 (except paragraphs 1 and 3), Part IV, and were moved to a new Appendix 12A. The LIO listings are determined based on the elements of the greater offense, but are not binding. Therefore, practitioners should use Appendix 12A only as a guide. To determine if an offense is lesser included, the elements test must be used. *United States* v. *Jones,* 68 M.J. 465, 470 (C.A.A.F. 2010). The offenses are not required to possess identical statutory language; rather, the court uses normal principles of statutory construction to determine the meaning of each element. *See id.* at 470–73; *United States* v. *Oatney,* 45 M.J. 185 (C.A.A.F. 1996); *Schmuck* v. *United States,* 489 U.S. 705 (1989).

Article 134 offenses generally will not be lesser included offenses of enumerated offenses in Articles 80–133. *See United States* v. *Girouard,* 70 M.J. 5 (C.A.A.F. 2011); *United States* v. *McMurrin,* 70 M.J. 15 (C.A.A.F. 2011). Article 134 specifications must contain the ''terminal element.'' *See* paragraphs 60.b and 60.c.(6)(a) in Part IV. *See also United States* v. *Fosler,* 70 M.J. 225 (C.A.A.F. 2011); *United States* v. *Ballan,* 71 M.J. 28 (C.A.A.F. 2012); R.C.M. 307(c)(3).''

(b) Paragraph 43.a, Article 118, Murder, is amended by adding the following language:

''*2012 Amendment:* This statute was modified pursuant to section 541 of the National Defense Authorization Act for Fiscal Year 2012, P.L. 112–81, 31 December 2011, to conform to renamed sexual assault offenses in Article 120 and Article 120b. The changes took effect on 28 June 2012.''

(c) Paragraph 45, Article 120, Rape and sexual assault generally, the first paragraph of the analysis beginning with the word ''*2012*'' and ending with the number ''28'' is amended to read as follows:

''*2012 Amendment:* This paragraph was substantially revised by section 541 of the National Defense Authorization

Act for Fiscal Year 2012, P.L. 112–81, 31 December 2011. Amendments contained in this section took effect on 28 June 2012. Sec. 541(f), P.L. 112–81. On 28 June 2012, a modified paragraph 45, ''Rape and sexual assault generally,'' replaced the 2007 version of paragraph 45, ''Rape, sexual assault, and other sexual misconduct.'' The analysis related to prior versions of Article 120 is located as follows: For offenses committed prior to 1 October 2007, *see* Appendix 27; for offenses committed during the period 1 October 2007 through 27 June 2012, *see* Appendix 28.''

(d) Paragraph 45, Article 120, Rape and sexual assault generally, is amended by deleting subparagraphs b, c, d, e, and f.

(e) Paragraph 45, Article 120b, Rape and sexual assault of a child, is amended by inserting ''b'' after ''45''.

(f) Paragraph 45b, Article 120b, Rape and sexual assault of a child, is amended by deleting subparagraphs b, c, d, e, and f.

(g) Paragraph 45c, Article 120c, Other sexual misconduct, is amended by deleting subparagraphs b, c, d, e, and f.

(h) Paragraph 51, Article 125, Sodomy, is amended by changing the title to ''Forcible Sodomy'' and adding the following language at the beginning:

''*2016 Amendment:* Paragraph 51 was amended pursuant to section 1707 of the National Defense Authorization Act for Fiscal Year 2014, P.L. 113–66, 26 December 2013. Additionally, all applicable references to sodomy throughout the Manual were changed to ''forcible sodomy'' to reflect the decriminalization of consensual sodomy under the UCMJ.''

(i) Paragraph 60.c.(6)(a) is amended to read as follows:

''*2016 Amendment:* In 2012 the Manual was amended to address the changes in practice resulting from the holding in *United States* v. *Fosler,* 70 M.J. 225 (C.A.A.F. 2011). In 2016, the President required that the terminal element be expressly alleged in every Article 134 specification.

The President ended the historical practice of allowing the terminal element to be inferred from Article 134 specifications, *see, e.g. United States* v. *Mayo,* 12 M.J. 286 (C.M.A. 1982), and required the terminal element be expressly alleged to provide sufficient notice to the accused and for uniformity and consistency in practice. *See Fosler,* 70 M.J. at 227–28. In general, when drafting specifications, the Government must allege every element, either expressly or by necessary implication. *See* R.C.M. 307(c)(3). However, in Article 134 specifications, the accused must be given notice as to which clause or clauses he must defend against; therefore, the terminal element may not be inferred from a specification.

Although a single terminal element is required, there are three theories of liability that would satisfy the terminal element: a disorder or neglect to the prejudice of good order and discipline (under clause 1); conduct of a nature to bring discredit upon the armed forces (under clause 2); or a crime or offense not capital (under clause 3). The three clauses are ''distinct and separate.'' *Fosler,* 70 M.J. at 230. A single theory may be alleged, or clauses 1 and 2 may be combined. While it is not prohibited to combine clauses 1, 2, and 3 in one specification, such a combination is not practical.

When charging both clauses 1 and 2, practitioners are encouraged to use the word ''and'' to separate the theories in one specification, rather than using the word ''or'' to separate the theories. Practitioners may also allege two separate specifications. At findings, the Trial Counsel or Military Judge must make certain that the record is clear as to whether the trier of fact found that clause 1, clause 2, or both clauses were proven beyond a reasonable doubt. Using the word ''and'' to separate clauses 1 and 2 in the terminal element allows the trier of fact to except the unproven clause from the specification. This approach forces intellectual rigor in analyzing each clause as distinct and separate. Nothing in this analysis should be read to suggest that a specification connecting the two theories with the disjunctive ''or'' necessarily fails to give the accused reasonable notice of the charge against him. *See United States* v. *Rauscher,* 71 M.J. 225, 226 (C.A.A.F. 2012) (per curiam) (citing *Russell* v. *United States,* 369 U.S. 749, 765 (1962)).''

(j) Paragraph 60.c.(6)(b) is amended by deleting the paragraph beginning with the words ''*2012 Amendment*'' and ending ''above.'', and inserting in its place:

''*2016 Amendment:* New discussion was added in 2012 to address *United States* v. *Fosler,* 70 M.J. 225 (C.A.A.F. 2011). In 2016, that discussion was removed after paragraph 60 was amended by Executive Order. *See* analysis under subparagraph c.(6)(a) above.''

(k) Paragraph 62.c.(2) is amended to read as follows:

''(2) When determining whether adulterous acts constitute the offense of adultery under Article 134, commanders should consider the listed factors. The offense of adultery is intended to prohibit extramarital sexual behavior that directly affects the discipline of the armed forces, respect for the chain of command, or maintenance of unit cohesion. The intent of this provision is to limit the crime of adultery to those situations where the negative impact to the unit is real rather than theorized. This provision should not be interpreted to criminalize sexual practices between two adults with full and mutual consent from each other, but rather, to punish the collateral negative effects of extramarital sexual activity when there exists a genuine nexus between that activity and the efficiency and effectiveness of the armed forces. *Cf. United States* v. *Marcum,* 60 M.J. 198, 204–08 (C.A.A.F. 2004) (despite constitutionally protected liberty interest in private sexual behavior between consenting adults, military may regulate sexual conduct to the extent it could affect military order and discipline).

While each commander has discretion to dispose of offenses by members of the command, wholly private and consensual sexual conduct between adults is generally not punishable under this paragraph. The right to engage in such conduct, however, is tempered in a military context by the mission of the military, the need for cohesive teams, and the need for obedience to orders. Cases involving fraternization or other unprofessional relationships may be more appropriately charged under Article 92 or Article 134—Fraternization. Cases involving abuse of authority by officers may be more appropriately charged under Article 133.

Rule for Courts-Martial 306(b) advises commanders to dispose of alleged offenses at the lowest appropriate level. As the R.C.M. 306(b) discussion states, many factors must be taken into consideration and balanced, including, to the extent practicable, the nature of the offense, any mitigating or extenuating circumstances, any recommendations made by subordinate commanders, the interests of justice, military exigencies, and the effect of the decision on the military member and the command. The goal should be a disposition that is warranted, appropriate, and fair. In the case of officers, also consult the explanation to paragraph 59 of Part IV in deciding how to dispose of an allegation of adultery.''

(l) Paragraph 90 is amended to read as follows:

''90. Article 134—(Indecent Conduct)

Introduction. This offense is new to the Manual for Courts-Martial and was promulgated pursuant to Executive Order 13740 of 16 September 2016. It

includes offenses previously proscribed by ''Indecent acts with another,'' which was deleted pursuant to Executive Order 13447 of 1 October 2007, except that the presence of another person is not required. (m) Paragraph 97, Article 134 (Pandering and prostitution) is amended by adding the following language:

''*2016 Amendment:* Paragraph 97 was amended to broaden the definition of prostitution and pandering to include all sexual acts, not just sexual intercourse. This amendment included the removal of the language in paragraph 97.c suggesting that engaging in sodomy for money or compensation could be charged under paragraph 51 (Article 125—Sodomy). Pursuant to section 1707 of the National Defense Authorization Act for Fiscal Year 2014, P.L. 113–66, 26 December 2013, consensual sodomy is no longer a crime under the UCMJ and Article 125 is not an appropriate charge for the consensual exchange of money for sodomy. The definition of prostitution for this offense differs from the definition of prostitution in Article 120c. Congress provided a broader definition of prostitution when criminalizing forcible pandering.

Dated: November 3, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–26947 Filed 11–7–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0125]

Agency Information Collection Activities; Comment Request; Implementation of Title I/II–A Program Initiatives

AGENCY: Institute of Education Sciences (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a reinstatement of a previously approved information collection.

DATES: Interested persons are invited to submit comments on or before January 9, 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–0125. 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–343, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Erica Johnson, 202–245–7676.

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: Implementation of Title I/II–A Program Initiatives.

OMB Control Number: 1850–0902.

Type of Review: A reinstatement of a previously approved information collection.

Respondents/Affected Public: State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 621.

Total Estimated Number of Annual Burden Hours: 672.

Abstract: The second round of data collection for the Implementation of Title I/II–A Program Initiatives study will continue to examine the implementation of policies promoted through the Elementary and Secondary Education Act (ESEA) at the state and district levels, in four core areas: School accountability and support for low-performing schools, teacher and principal evaluation, state content standards, and assessments. The first round of data collection for this study was conducted in Spring and Summer 2014.

The purpose of this follow-up data collection is to provide policy makers with detailed information on the core policies promoted by Title I and Title II–A being implemented at the state and district levels, and the resources and supports they provide to schools and teachers. The timing of the data collection is critical to provide information prior to the full implementation of the Every Student Succeeds Act (ESSA) in the 2017–18 school year. Although other research studies cover similar topics on recent federal education policy, the breadth of research questions and the depth of responses from all states and a nationally representative sample of 570 school districts sets the Title I/II study apart from other studies.

This study will rely on information collected from existing sources, for which there are no respondents or burden, and on a set of revised state and district surveys, based on the 2014 data collection, in order to address the study's research questions. Extant data sources include (a) the National Assessment of Educational Progress (NAEP) and (b) EDFacts data.

The revised surveys of states and school districts will begin in April 2017. All respondents will have the opportunity to complete an electronic (*e.g.,* web-based) survey (or paper survey, if preferred). The survey respondents are described briefly below:

State Surveys: The state survey will be sent to the chief state school officer in each of the 50 states and the District of Columbia. The state surveys will be administered using an electronic instrument divided into modules corresponding to the four core areas.

School District Surveys. The school district survey will be sent to school superintendents from the same nationally representative sample of 570 school districts that participated in the 2014 survey. The district survey will be web-based and modularized, corresponding to the four core areas, to allow for completion by one or multiple respondents.

Dated: November 3, 2016.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–26944 Filed 11–7–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0095]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Foreign Schools Eligibility Criteria Apply To Participate in Title IV HEA Programs

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before December 8, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0095. 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–347, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Foreign Schools Eligibility Criteria Apply To Participate in Title IV HEA Programs.

OMB Control Number: 1845–0105.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or Households; Private Sector; State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 4,135.

Total Estimated Number of Annual Burden Hours: 398.

Abstract: The information in 34 CFR 600.54, 600.55, 600.56 and 600.57 is used by the Department during the initial review for eligibility certification, recertification and annual evaluations. These regulations help ensure that all foreign institutions participating in the Title IV, Higher Education Act (HEA) Programs are meeting the minimum participation standards.

Dated: November 3, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–26914 Filed 11–7–16; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2015–0056; FRL–9955–02–OW]

National Advisory Council for Environmental Policy and Technology: Assumable Waters Subcommittee; Notice of Public Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of federal advisory subcommittee meetings.

SUMMARY: Consistent with the Federal Advisory Committee Act, Public Law 92463, EPA is giving notice of an upcoming public meeting of the Assumable Waters Subcommittee convened under the National Advisory Council for Environmental Policy and Technology (NACEPT). The Assumable Waters Subcommittee will provide advice and recommendations as to how the EPA can best clarify assumable waters for dredge and fill permit programs pursuant to Clean Water Act section 404(g)(1). The EPA is undertaking this effort to support states and tribes that wish to assume the program. Similar to the parent NACEPT, the subcommittee represents a diversity of interests from academia, industry, non-governmental organizations, and local, State, and tribal governments.

Meeting agendas and materials will be posted at *www.epa.gov/cwa-404/assumable-waters-sub-committee.*

DATES: The Assumable Waters Subcommittee will hold a public meeting on:

- December 9th, from 12:30 p.m. to 3:30 p.m. EDT, at this Web site: *https://cbuilding.zoom.us/j/5305689032.*

ADDRESSES:

- This is virtual meeting which can be accessed at this Web site: *https://cbuilding.zoom.us/j/5305689032* and via phone: (408) 638–0968 (US Toll) or (646) 558–8656 (US Toll). The meeting ID is 530 568 9032

FOR FURTHER INFORMATION CONTACT: Jacob B. Strickler, Acting Designated Federal Officer, via email at: *assumablewaters@epa.gov*, by phone: (202) 564–4692, or via postal service at: U.S. Environmental Protection Agency (MC–2388A), 1200 Pennsylvania Avenue NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Requests to make oral comments or to provide written comments to the Assumable Waters Subcommittee should be sent to Jacob B. Strickler via email at: *assumablewaters@epa.gov* by December 1st, 2016. The meetings are open to the public, with limited phone lines

available on a first-come, first-served basis. Members of the public wishing to attend should contact Jacob B. Strickler via email at: *assumablewaters@epa.gov* or by phone at: (202) 564–4692 by December 5th, 2016, so we can ensure adequate phone lines are available. On December 9th, 2016, public comments will heard beginning at 3:00 p.m. until 3:30 p.m. EDT or until all comments have been heard.

Meeting Access: The agency will strive to reasonably accommodate individuals with disabilities. Information regarding accessibility and/or accommodations for individuals with disabilities should be directed to Jacob B. Strickler at the email address or phone number listed above. To ensure adequate time for processing, please make requests for accommodations at least 8 days prior to the meeting.

Dated: November 1, 2016.

Benita Best-Wong,

Director, Office of Wetlands, Oceans, and Watersheds.

[FR Doc. 2016–26967 Filed 11–7–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9954–45–Region 6]

Adequacy Status of the Dallas-Fort Worth, Texas Attainment Demonstration 8-Hour Ozone Motor Vehicle Emission Budgets for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: The Environmental Protection Agency (EPA) is notifying the public that it has found that the motor vehicle emissions budgets (MVEBs) in the Dallas-Fort Worth, Texas (DFW) Attainment Demonstration (AD) State Implementation Plan (SIP) revision for the 2008 8-hour ozone National Ambient Air Quality Standard (NAAQS), submitted on August 5, 2016 by the Texas Commission on Environmental Quality (TCEQ) are adequate for transportation conformity purposes. As a result of EPA's finding, the DFW area must use these budgets for future conformity determinations.

DATES: These budgets are effective November 23, 2016.

FOR FURTHER INFORMATION CONTACT: The essential information in this notice will be available at EPA's conformity Website: *https://www.epa.gov/state-and-local-transportation/adequacy-review-state-implementation-plan-sip-submissions-conformity*. You may also contact Mr. Jeffrey Riley, State Implementation Section (6MM–AA), U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, at (214) 665–8542 or *Riley.Jeffrey@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' refers to EPA. The word ''budget(s)'' refers to the mobile source emissions budget for volatile organic compounds (VOCs) and the mobile source emissions budget for nitrogen oxides (NO_X).

On August 5, 2016, we received a SIP revision from the TCEQ. This revision consisted of an AD SIP for the DFW 2008 8-hour ozone NAAQS nonattainment area. This submission established MVEBs for the DFW 2008 ozone nonattainment area for the year 2017. The MVEB is the amount of emissions allowed in the SIP for on-road motor vehicles; it establishes an emissions ceiling for the DFW area regional transportation network, used to develop the 2017 on-road motor vehicle emissions projections contained in the AD SIP. The MVEBs are provided in Table 1:

TABLE 1—DALLAS-FORT WORTH ATTAINMENT DEMONSTRATION NO_X AND VOC MVEBS

[Summer season tons per day]

	2017
NO_X	130.77
VOC	64.91

On September 7, 2016, EPA posted the revised DFW area MVEBs on EPA's Web site for the purpose of soliciting public comments, as part of the adequacy process. The comment period closed on October 6, 2016, and we received no comments.

Today's notice is simply an announcement of a finding that EPA has already made. EPA Region 6 sent a letter to TCEQ on October 17, 2016, finding that the MVEBs in the DFW AD SIP, submitted on August 5, 2016 are adequate and must be used for transportation conformity determinations in the DFW area. This finding has also been announced on EPA's conformity Web site: *https://www.epa.gov/state-and-local-transportation/adequacy-review-state-implementation-plan-sip-submissions-conformity*.

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule, 40 Code of Federal Regulations (CFR) part 93, requires that transportation plans, programs and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do so. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which EPA determines whether a SIP's MVEB is adequate for transportation conformity purposes are outlined in 40 CFR 93.118(e)(4). We have also described the process for determining the adequacy of submitted SIP budgets in our July 1, 2004, final rulemaking entitled, ''Transportation Conformity Rule Amendments for the New 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes'' See 69 FR 40004 (July 1, 2004). Please note that an adequacy review is separate from EPA's completeness review, and it should not be used to prejudge EPA's ultimate approval of the DFW 2008 8-hour ozone NAAQS AD SIP revision submittal. Even if EPA finds the budgets adequate, the DFW AD SIP revision submittal could later be disapproved.

Within 24 months from the effective date of this notice, the DFW-area transportation partners, such as the North Central Texas Council of Governments, will need to demonstrate conformity to the new MVEBs if the demonstration has not already been made, pursuant to 40 CFR 93.104(e). See 73 FR 4419 (January 24, 2008).

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

Dated: November 2, 2016.

Ron Curry,

Regional Administrator, Region 6.

[FR Doc. 2016–26957 Filed 11–7–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0214]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–

3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before January 9, 2017. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams, (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0214.

Title: Sections 73.3526 and 73.3527, Local Public Inspection Files; Sections 73.1212, 76.1701 and 73.1943, Political Files.

Form Number: None.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit entities; Not for profit institutions; State, Local or Tribal government; Individuals or households.

Number of Respondents and Responses: 24,013 respondents; 63,364 responses.

Estimated Time per Response: 1–52 hours.

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

Obligation to Respond: Required to obtain or retain benefits. The statutory authority that covers this information collection is contained in Sections 151, 152, 154(i), 303, 307 and 308 of the Communications Act of 1934, as amended.

Total Annual Burden: 2,087,626 Hours.

Total Annual Cost: $27,363.

Privacy Impact Assessment: The Commission prepared a system of records notice (SORN), FCC/MB–2, ''Broadcast Station Public Inspection Files,'' that covers the PII contained in the broadcast station public inspection files located on the Commission's Web site. The Commission will revise appropriate privacy requirements as necessary to include any entities and information added to the online public file in this proceeding.

Nature and Extent of Confidentiality: Most of the documents comprising the public file consist of materials that are not of a confidential nature. Respondents complying with the information collection requirements may request that the information they submit be withheld from disclosure. If confidentiality is requested, such requests will be processed in accordance with the Commission's rules, 47 CFR 0.459.

In addition, the Commission has adopted provisions that permit respondents subject to the information collection requirement for Shared Service Agreements to redact confidential or proprietary information from their disclosures.

Needs and Uses: The information collection requirements included under this OMB Control Number 3060–0214, requires commercial broadcast stations to maintain for public inspection a file containing the material set forth in 47 CFR 73.3526.

This collection is being revised to reflect the burden associated with the Shared Service Agreement disclosure requirements adopted in the *2014 Quadrennial Regulatory Review* (81 FR 76220, Nov. 1, 2016, FCC 16–107, rel. Aug. 25, 2016). The collection requires commercial television stations to place in their online public inspection file a copy of every Shared Service Agreement for the station (with the substance of oral agreements reported in writing), regardless of whether the agreement involves commercial television stations in the same market or in different markets, with confidential or proprietary information redacted where appropriate. For purposes of this collection, a Shared Service Agreement is any agreement or series of agreements in which (1) a station provides any station-related services, including, but not limited to, administrative, technical, sales, and/or programming support, to a station that is not directly or indirectly under common de jure control permitted under the Commission's regulations; or (2) stations that are not directly or indirectly under common de jure control permitted under the Commission's regulations collaborate to provide or enable the provision of station-related services, including, but not limited to, administrative, technical, sales, and/or programming support, to one or more of the collaborating stations. For purposes of this collection, the term ''station'' includes the licensee, including any subsidiaries and affiliates, and any other individual or entity with an attributable interest in the station.

This information collection requirement will provide the Commission and the public with more comprehensive information about the prevalence and content of Shared Service Agreements between television stations, which will improve the Commission's and the public's ability to assess the potential impact of these agreements on the Commission's rules and policies.

The information collection requirements contained under 47 CFR 73.1212, 73.3527, 73.1943 and 76.1701 are still a part of the information collection and remain unchanged since last approved by OMB.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2016–26903 Filed 11–7–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1126]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the

following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before January 9, 2017. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1126.

Title: Testing and Logging Requirements for Wireless Emergency Alerts (WEA).

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 80 Participating CMS Providers; 451,600 Responses.

Estimated Time per Response: 0.000694 hours (2.5 seconds) to generate each alert log; 2 hours to respond to each request for alert log data or information about geo-targeting.

Frequency of Response: Monthly and on occasion reporting requirements and recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 152, 154(i) and (o), 301, 301(r), 303(v), 307, 309, 335, 403, 544(g), 606 and 615 of the Communications Act of 1934, as amended, as well as by sections 602(a), (b), (c), (f), 603, 604 and 606 of the WARN Act.

Total Annual Burden: 125,390 hours.

Total Annual Cost: No cost.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: Participating CMS Providers shall make available upon request to the Commission and FEMA, and to emergency management agencies that offer confidentiality protection at least equal to that provided in the federal Freedom of Information Act (FOIA) their alert logs and information about their approach to geo-targeting insofar as the information pertains to alerts initiated by that emergency management agency.

Needs and Uses: The Commission adopted revisions to Wireless Emergency Alert (WEA) rules to take advantage of the significant technological changes and improvements experienced by the mobile wireless industry since the passage of the Warning, Alert and Response Network (WARN) Act, and deployment of Wireless Emergency Alerts (WEA) to improve utility of WEA as a life-saving tool. This action will improve alert content, delivery and testing. With respect to information collection, in particular, the Commission adopted requirements for Participating CMS Providers to log the basic attributes of alerts they receive at their Alert Gateway, to maintain those logs for at least 12 months, and to make those logs available upon request to the Commission and FEMA, and to emergency management agencies that offer confidentiality protection at least equal to that provided by federal FOIA. The Commission also required Participating CMS Providers to disclose information regarding their capabilities for geo-targeting Alert Messages upon request to such emergency management agencies insofar as it would pertain to Alert Messages initiated by that emergency management agency.

These recordkeeping and reporting requirements have potential to increase emergency managers' confidence that WEA will work as intended when needed. This increased confidence in system availability will encourage emergency managers that do not currently use WEA to become authorized. These reporting and recordkeeping requirements also help to ensure a fundamental component of system integrity. Alert logs are necessary to establish a baseline for system integrity against which future iterations of WEA can be evaluated. Without records that can be used to describe the quality of system integrity, and the most common causes of message transmission failure, it will be difficult to evaluate how any changes to WEA that we may adopt subsequent to this *Report and Order* affect system integrity.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2016–26902 Filed 11–7–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 22, 2016.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528. Comments can also be sent electronically to *Comments.applications@rich.frb.org:*

1. *Wayne L Culley and Patricia J Culley, as co-trustees of the Wayne L Culley Revocable Trust and the Patricia J Culley Revocable Trust, all of Cameron, Missouri and Keith Culley and Marcella Culley, both of St. Joseph, Missouri, as members of the Culley Family Control Group;* to acquire voting shares of Farmers Bancshares Inc., and thereby acquire Independent Farmers Bank, both of Maysville, Missouri.

Board of Governors of the Federal Reserve System, November 2, 2016.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2016–26864 Filed 11–7–16; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0011; Docket 2016–0053; Sequence 35]

Information Collection; Preaward Survey Forms (Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408)

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning preaward survey forms (Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408).

DATES: Submit comments on or before January 9, 2017.

ADDRESSES: Submit comments identified by Information Collection 9000–0011, Preaward Survey Forms, (Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408) by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0011, Preaward Survey Forms, (Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408)'' on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 9000–0011.

Instructions: Please submit comments only and cite Information Collection 9000–0011, Preaward Survey Forms, (Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408), in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis, Procurement Analyst, Office of Governmentwide Acquisition Policy, GSA, 202–219–0202 or email *cecelia.davis@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

To protect the Government's interest and to ensure timely delivery of items of the requisite quality, contracting officers, prior to award, must make an affirmative determination that the prospective contractor is responsible, *i.e.,* capable of performing the contract. Before making such a determination, the contracting officer must have in his possession or must obtain information sufficient to satisfy himself that the prospective contractor: (i) Has adequate financial resources, or the ability to obtain such resources; (ii) is able to comply with required delivery schedule; (iii) has a satisfactory record of performance; (iv) has a satisfactory record of integrity; and (v) is otherwise qualified and eligible to receive an award under appropriate laws and regulations. If such information is not in the contracting officer's possession, it is obtained through a preaward survey conducted by the contract administration office responsible for the plant and/or the geographic area in which the plant is located. The necessary data is collected by contract administration personnel from available data or through plant visits, phone calls, and correspondence. This data is entered on Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408 in detail commensurate with the dollar value and complexity of the procurement. These standard forms are not cumulative. The surveying activity completes only the applicable standard form(s) necessary to determine contractor responsibility in each case.

B. Annual Reporting Burden

There are no Governmentwide systems for collecting the number of preaward surveys completed in a fiscal year as preaward surveys are only required in limited circumstances where information for the prospective contractor cannot be obtained by the contracting officer to make an affirmative statement of responsibility. Further, if the contemplated contract will have a fixed price at or below the $150,000 simplified acquisition threshold (SAT) or will involve the acquisition of commercial items (see Part 12); the contracting officer should not request a preaward survey unless circumstances justify its cost.

Using parameters identified above a Federal Procurement Data System (FPDS) ad hoc report was completed identifying that in Fiscal Year (FY) 2015 an estimated total of 24,791 contracts were awarded Governmentwide that were over the SAT, and for which commercial acquisition procedures were not used. Of that number, it is estimated that preaward surveys were completed for 15 percent, or 3,719 of the 24,791 contracts that were awarded. Of the six Standard Forms (1403, 1404, 1405, 1406, 1407, and 1408), we estimated that Standard Form 1403 is used most frequently because it is a general form and accounts for 30 percent or 1,116 times, Standard Forms 1404 and 1407 account for 15 percent or 558 times, Standard Form 1408 accounts for 20 percent or 744 times, and Standard Forms 1405 and 1406 account 10 percent or 372 times.

After consultation with subject matter experts, it was determined that the time required to prepare and complete the Standard Forms is estimated at 24 hours per response. Because preaward survey data is generally used for multiple contracts awarded within a 12 month period, it is estimated that only one (1) response would be reported annually per respondent per form.

Standard Form 1403—Preaward Survey of Prospective Contractor (General)

Respondents: 1,116.
Responses Annually: 1.
Total Responses: 1,116.
Hours per Response: 24.
Total Burden Hours: 26,784.

Standard Form 1404—Preaward Survey of Prospective Contractor Technical

Respondents: 558.
Responses Annually: 1.
Total Responses: 558.
Hours per Response: 24.
Total Burden Hours: 13,392.

Standard Form 1405—Preaward Survey of Prospective Contractor Production

Respondents: 372.
Responses Annually: 1.
Total Responses: 372.
Hours per Response: 24.
Total Burden Hours: 8,928.

Standard Form 1406—Preaward Survey of Prospective Contractor Quality Assurance

Respondents: 372.
Responses Annually: 1.

Total Responses: 372.

Hours per Response: 24.

Total Burden Hours: 8,928.

Standard Form 1407—Preaward Survey of Prospective Contractor Financial Capability

Respondents: 558.

Responses Annually: 1.

Total Responses: 558.

Hours per Response: 24.

Total Burden Hours: 13,392.

Standard Form 1408—Preaward Survey of Prospective Contractor Accounting System

Respondents: 744.

Responses Annually: 1.

Total Responses: 744.

Hours per Response: 24.

Total Burden Hours: 17,856.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Federal Acquisition Regulations (FAR), and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control Number 9000–0011, Preaward Survey Forms (Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408), in all correspondence.

Dated: November 3, 2016.

Lorin S. Curit,

Director, Federal Acquisition Policy Division, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2016–26948 Filed 11–7–16; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0182]; Docket No. 2016–0053; Sequence 32]

Submission for OMB Review; Privacy Training

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding a new OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request for approval of an information collection requirement regarding privacy training. A notice was published in the **Federal Register** at 76 FR 63896 on October 14, 2011, as part of a proposed rule under FAR Case 2010–013. Two public comments were received on the information collection.

DATES: Submit comments on or before December 8, 2016.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503. Additionally submit a copy to GSA by any of the following methods:

- Regulations.gov: *http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number 9000–0182. Select the link ''Comment Now'' that corresponds with ''Information Collection 9000–0182, Privacy Training''. Follow the instructions provided on the screen. Please include your name, company name (if any), and ''Information Collection 9000–0182, Privacy Training'' on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 9000–0182, Privacy Training.

Instructions: Please submit comments only and cite Information Collection 9000–0182, Privacy Training, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Charles Gray, Procurement Analyst, Office of Governmentwide Acquisition Policy, at telephone 703–795–6328 or via email to *charles.gray@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The Privacy Act of 1974, (5 U.S.C. 552a) prescribes fair information practices for the collection, maintenance, use, and dissemination of personal information by Federal agencies. Consistent with the provisions of the Privacy Act of 1974, OMB Circular A–130, ''Managing Information as a Strategic Resource,'' and other OMB memoranda, this rule specifically addresses the recordkeeping and reporting associated with FAR clause 52.224–XX, ''Privacy Training.'' The clause is used in solicitations and contracts whenever contract performance requires the employees of the contractor (or the employees of subcontractors) to have access to personally identifiable information (PII), including access to a system of records on individuals or entails the design, development, maintenance, or the operation of a system of records on individuals. The recordkeeping effort involves maintenance of training completion documentation by contractors; the reporting covers submission of the training completion documentation to the contracting officer upon request. It is anticipated that the Government would request this documentation only rarely.

B. Discussion and Analysis

DoD, GSA, and NASA provided notification of the applicability of the Paperwork Reduction Act and requested approval for a new information collection requirement as part of FAR Case 2010–013, published at 76 FR 63896, on October 14, 2011. Two respondents commented on the annual burden estimate.

Comment: The respondents stated that the annual burden estimate with respect to the public's Paperwork Reduction Act reporting burden was understated. The respondents believed that (a) requiring contractors to conduct their own privacy training and (b)

requiring re-training every year created a greater burden on contractors.

Response: In response to the concerns expressed by these respondents, it is noted that this information collection requirement does not address the burden associated with conducting the initial or subsequent annual privacy training. Rather, it focuses solely on the obligation of Federal contractors' to maintain documentation showing that the required privacy training was completed by the employee and, upon request, provide completion documentation to the contracting officer. However, since the analysis used in the proposed rule did not encompass contracts involving the acquisition of commercial items, the methodology used to derive the estimated hourly and cost burden described in the proposed rule has been revised in the final rule.

C. Annual Reporting Burden

Recordkeeping

Number of Respondents: 31,821.
Responses per Respondent: 6.
Total annual Responses: 194,942.
Preparation hours per response: .5.
Total Recordkeeping Burden Hours: 97,471.

Reporting

Number of Respondents: 796.
Responses per Respondent: 1.
Total annual Responses: 796.
Preparation hours per response: .25.
Total Recordkeeping Burden Hours: 199.
Total Recordkeeping and Reporting Burden Hours: 97,670.
Affected Public: Businesses or other for-profit institutions and not for profit institutions.
Frequency: On occasion.
Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755.

Please cite OMB Control No. 9000–0182, Privacy Training, in all correspondence.

Dated: November 2, 2016.

Lorin S. Curit,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2016–26889 Filed 11–7–16; 8:45 am]

BILLING CODE P

GULF COAST ECOSYSTEM RESTORATION COUNCIL

Senior Executive Service Performance Review Board Membership

AGENCY: Gulf Coast Ecosystem Restoration Council.

ACTION: Notice of Performance Review Board appointments.

SUMMARY: This notice announces the members of the Senior Executive Service Performance Review Board (PRB) for the Gulf Coast Ecosystem Restoration Council as required by 5 U.S.C. 4314(c)(4). The PRB is comprised of a Chairperson and a mix of career Federal senior executives and State members from the Council. The PRB meets annually to review and evaluate performance appraisal documents and provides a written recommendation to the Secretary for final approval of each executive's performance rating, performance-based pay adjustment, and performance award.

DATES: Effective October 6, 2016.

FOR FURTHER INFORMATION CONTACT: Justin Ehrenwerth, Executive Director, GCERC, telephone: (504) 444–3265.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the persons named below have been selected to serve on the PRB:

Gulf Coast Ecosystem Restoration Council

Ehrenwerth, Justin

Department of Agriculture

Wilkes, Homer

Environmental Protection Agency

Scaggs, Benjamin

Department of the Interior

Dohner, Cynthia

State of Texas

Tatum, Stephen

State of Florida

Drew, Mimi

Dated: October 31, 2016.

Thomas J. Vilsack,

Secretary.

[FR Doc. 2016–26940 Filed 11–7–16; 8:45 am]

BILLING CODE 6560–58–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Multi-Agency Informational Meeting Concerning Compliance With the Federal Select Agent Program; Public Webcast

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of rescheduled public webcast.

SUMMARY: The HHS/CDC's Division of Select Agents and Toxins (DSAT) and the U.S. Department of Agriculture's Animal and Plant Health Inspection Service, Agriculture Select Agent Services (AgSAS) are jointly charged with the regulation of the possession, use and transfer of biological agents and toxins that have the potential to pose a severe threat to public, animal or plant health or to animal or plant products (select agents and toxins). This joint effort constitutes the Federal Select Agent Program. The purpose of the webcast is to provide guidance and information related to the Federal Select Agent Program for interested individuals.

DATES: The webcast, which was originally scheduled for Wednesday, November 9, 2016 is rescheduled to Wednesday, February 8, 2017 from 12 p.m. to 4 p.m. EST. All who wish to join the webcast should register by February 6, 2017. The registration is available on this Web site: *http://www.selectagents.gov/webform.html.*

ADDRESSES: The webcast will be broadcast from CDC, 1600 Clifton Road, Atlanta, GA 30329. This will only be produced as a webcast; therefore, no accommodations will be provided for in-person participation.

FOR FURTHER INFORMATION CONTACT:

CDC: Ms. Diane Martin, DSAT, Office of Public Health Preparedness and Response, CDC, 1600 Clifton Road, NE., MS A–46, Atlanta, GA 30329; phone: 404–718–2000; email: *lrsat@cdc.gov.*

APHIS: Dr. Leon White, AgSAS, APHIS, 4700 River Road, Unit 2, Riverdale, MD 20737; phone: 301–851–3300 (option 3); email: *AgSAS@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION: The public webcast—originally scheduled for Wednesday, November 9, 2016 and rescheduled to Wednesday, February 8, 2017—is an opportunity for the affected community (*i.e.,* registered entity responsible officials, alternate responsible officials, and entity owners) and other interested individuals to obtain specific regulatory guidance and information concerning biosafety, security and incident response issues related to the Federal Select Agent Program.

Representatives from the Federal Select Agent Program will be present during the webcast to address questions and concerns from the web participants.

Participants that have already registered for the November date will not need to re-submit registration requests for the new date. Those individuals that have not registered and want to participate in the webcast should complete their registration online by February 6, 2017. The registration is available on this Web site: *http://www.selectagents.gov/webform.html.*

Sandra Cashman,

Executive Secretary, Centers for Disease Control and Prevention.

[FR Doc. 2016–26927 Filed 11–7–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10526]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including any of the following subjects: the necessity and utility of the proposed information collection for the proper performance of the agency's functions; the accuracy of the estimated burden; ways to enhance the quality, utility, and clarity of the information to be collected; and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by January 9, 2017.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address:

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10526—Cost-Sharing Reduction Reconciliation Information Collection

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Revision of a currently approved information collection; *Title of Information Collection:* Cost-Sharing Reduction Reconciliation Information Collection; *Use:* Under established Department of Health and Human Services (HHS) regulations, qualified health plan (QHP) issuers will receive estimated advance payments of cost-sharing reductions throughout the year. Each issuer will then be subject to a reconciliation process at the end of the benefit year to ensure that HHS reimburses each issuer only for actual cost sharing. This revised collection adds three data elements, a Policy Identification number, Policy Start Date, and Policy End Date, and proposes to eliminate most summary plan level reporting. *Form Number:* CMS–10526 (OMB Control Number 0938–1266). *Frequency:* Once, Yearly; *Affected Public:* Private Sector—Not-for-profit institutions; *Number of Respondents:* 295; *Number of Responses:* 4,000,000; *Total Annual Hours:* 6,939. (For policy questions regarding this collection, contact Pat Meisol at 410–786–1917)

Dated: November 2, 2016.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2016–26875 Filed 11–7–16; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: National Study of Title IV–E Child Welfare Waiver Demonstrations.

OMB No.: New Collection.

Description: The National Study of the Title IV–E Child Welfare Waiver Demonstrations is sponsored by the Children's Bureau, Administration for Children and Families of the U.S. Department of Health and Human Services and involves the conduct of a cross-site study of jurisdictions (referred to as waiver jurisdictions) approved to operate demonstrations authorized by section 1130 of the Social Security Act, as amended by the Child and Family Services Improvement and Innovation Act, Public Law 112–34. The demonstrations involve waivers of certain provisions of the foster care program authorized by title IV–E of the Social Security Act. Child welfare agencies in waiver jurisdictions are operating demonstrations to implement a variety of programs and interventions that serve children and families in an effort to improve their safety, permanency, and well-being. Each waiver jurisdiction is required to conduct a third-party evaluation of its demonstration. The National Study will examine the extent to which safety, permanency, and well-being outcomes have improved for children and families; the characteristics of waiver jurisdictions where improvements in outcomes have occurred; expenditure patterns and the types of activities for which waiver jurisdictions have increased funding; and the extent to which waiver jurisdictions have experienced practice and systems-level changes.

The National Study uses a mixed-method approach to examine 25 waiver jurisdictions (including 23 states, the District of Columbia and one tribal government) with Terms and Conditions approved in Federal Fiscal years 2012, 2013, and 2014. Proposed data collection methods are two topically-focused telephone surveys: (a) A telephone survey of waiver jurisdiction representatives and evaluators who are focused on measuring well-being, and (b) a second telephone survey of waiver jurisdiction representatives and evaluators that is focused on understanding practice and systems-level changes within child welfare service systems. Also proposed is a Web-based survey of waiver jurisdiction representatives and evaluators that will look more broadly at the implementation of waiver demonstrations and corresponding changes in child welfare policy, practice, and financing. Two sampling survey forms are being proposed to collect the necessary contact information for respondents to the Web-based survey and the telephone survey focused on understanding practice and systems-level changes within child welfare service systems. Data collected through these instruments will be used by the Children's Bureau to gain an understanding of the jurisdictions' collective experience with implementing their demonstrations.

Respondents: The respondents to the Web-Based Survey will be a purposive sample of an estimated 250 waiver jurisdiction representatives and evaluators drawn from the 25 waiver jurisdictions with waiver demonstration projects (Arkansas, Arizona, Colorado, Hawaii, Illinois, Kentucky, Maine, Maryland, Massachusetts, Michigan, Nebraska, Nevada, New York, Oklahoma, Oregon, Pennsylvania, Port Gamble S'Klallam Tribe, Rhode Island, Tennessee, Texas, Utah, Washington, Washington DC, West Virginia, Wisconsin). The respondents will be identified by the 25 jurisdiction demonstration project leaders using the Web-Based Survey Sampling Form. The Web-Based Survey Sampling Form and the Web-Based Survey will be administered once during the National Study. The respondents to the Measuring Well-Being telephone survey will be a census sample of the 23 evaluators identified from the 23 waiver jurisdictions who are involved with the assessment of child and family well-being in their waiver jurisdictions. The Measuring Well-Being telephone survey will be administered once during the National Study. The respondents to the Practice and Systems-Level Change telephone survey will be a purposive sample of 60 respondents identified from 14 waiver jurisdictions who are knowledgeable about practice, policy, and organizational changes in their respective waiver jurisdictions. The respondents will be identified by the 14 jurisdiction demonstration project leaders using the Practice- and Systems-Level Change Survey Sampling Form. The Practice- and Systems-Level Change Survey Sampling Form and the Practice and Systems-Level Change telephone survey will be administered once during the National Study.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Web-Based Survey Sampling Form	25	1	0.33	8.25
Web-Based Survey	250	1	0.33	82.5
Measuring Well-Being Telephone Survey	23	1	1	23
Practice- and Systems-Level Change Survey Sampling Form	14	1	0.25	3.5
Practice- and Systems-Level Change Telephone Survey	60	1	1	60

Estimated Total Annual Burden Hours: 177.25.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW., Washington, DC 20201. Attention Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the

Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2016–26939 Filed 11–7–16; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Child and Family Services Plan (CFSP), Annual Progress and Services Review (APSR), and Annual Budget Expenses Request and Estimated Expenditures (CFS–101)

OMB No.: 0970–0426

Description: Under title IV–B, subparts 1 and 2, of the Social Security Act (the Act), States, Territories, and Tribes are required to submit a Child and Family Services Plan (CFSP). The CFSP lays the groundwork for a system of coordinated, integrated, and culturally relevant family services for the subsequent five years (45 CFR 1357.15(a)(1)). The CFSP outlines initiatives and activities the State, Tribe or territory will carry out in administering programs and services to promote the safety, permanency, and well-being of children and families, including, as applicable, those activities conducted under the John H. Chafee Foster Care Independence Program (Section 477 of the Act) and the State grant authorized by the Child Abuse Prevention and Treatment Act. By June 30 of each year, States, Territories, and Tribes are also required to submit an Annual Progress and Services Report (APSR) and a financial report called the CFS–101. The APSR is a yearly report that discusses progress made by a State, Territory or Tribe in accomplishing the goals and objectives cited in its CFSP (45 CFR 1357.16(a)). The APSR contains new and updated information about service needs and organizational capacities throughout the five-year plan period. The CFS–101 has three parts. Part I is an annual budget request for the upcoming fiscal year. Part II includes a summary of planned expenditures by program area for the upcoming fiscal year, the estimated number of individuals or families to be served, and the geographical service area. Part III includes actual expenditures by program area, numbers of families and individuals served by program area, and the geographic areas served for the last complete fiscal year.

Respondents: States, Territories, and Tribes must complete the CFSP, APSR, and CFS–101. Tribes and territories are exempted from the monthly caseworker visits reporting requirement of the CFSP/APSR. There are approximately 189 Tribal entities that currently receive IV–B funding. There are 53 States (including Puerto Rico, the District of Columbia, and the Virgin Islands) that must complete the CFSP, APSR, and CFS–101. There are a total of 242 possible respondents.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
APSR	242	1	80	19,360
CFSP	242	1	120.25	29,100.50
CFS–101, Parts I, II, and III	242	1	5	1,210
Caseworker Visits	53	1	99.33	5,264.49

Estimated Total Annual Burden Hours: 54,934.99

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW.; Washington, DC 20202; Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2016–26917 Filed 11–7–16; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Proposed Collection; Public Comment Request; Senior Medicare Patrol (SMP) Program National Beneficiary Survey

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL) is announcing that the proposed collection of information listed above has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by December 8, 2016.

ADDRESSES: Submit written comments on the collection of information by fax 202–395–5806 or by email to

OIRA_submission@omb.eop.gov, Attn: OMB Desk Officer for ACL.

FOR FURTHER INFORMATION CONTACT: Katherine Glendening by phone: 202–795–7350 or email: *Katherine.Glendening@acl.hhs.gov*.

SUPPLEMENTARY INFORMATION: In compliance with section 44 U.S.C. 3507, ACL has submitted the following proposed collection of information to OMB for review and clearance.

Proposed Collection: Evaluation of the Senior Medicare Patrols (SMP) program, U.S. Department of Health and Human Services (HHS), U.S. Administration for Community Living (ACL).

Need and Use of Information Collection: The SMP Customer Satisfaction Survey is a survey of individuals who attend Senior Medicare Patrol (SMP) presentations to understand the potential for fraud, waste, and abuse within health care programs generally and Medicare/Medicaid specifically. The Senior Medicare Patrols Program (SMP) was created under Titles II and IV of the Older Americans Act (42 U.S.C. 3032), the amendments of 2006 (Pub. L. 109–365) and the Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104–191). The mission of the SMP program is to empower and assist Medicare beneficiaries, their families, and caregivers to prevent, detect, and report health care fraud, errors, and abuse through outreach, counseling, and education. The SMP program empowers Medicare beneficiaries through increased awareness and understanding of healthcare programs and helps them protect themselves from the economic and health-related consequences of Medicare fraud, waste, and abuse. The SMP program provides services through a national network of SMP grantees that are located in every state, the District of Columbia, Puerto Rico, and Guam. In 2014, SMPs conducted more than 14,000 education session presentations, with a total audience of 450,000 individuals. The survey will focus on education session presentations and the individuals who attend them, to determine if the target audience is satisfied with the information they are receiving. While the SMP program currently tracks output and outcome measures such as number of SMP Team members, group outreach and education events, individual interactions, and savings, customer satisfaction is not one of them. As a result, there is no current understanding of the link between the quality of the information received and the likelihood to avoid healthcare fraud, errors, and abuse.

Comments in Response to the 60-Day Federal Register Notice

A notice was published in the **Federal Register** in Vol. 81, No. 125/Wednesday, June 29, 2016, Pages 42360–42361, announcing that ACL was requesting approval of a data collection (ICR New). No comments were received.

Estimated Data Burden

The SMP survey will be conducted over a three-year period beginning in Fiscal Year 2017 (FY 2017). Sites in each of the 50 states, the District of Columbia, and the territories of Guam and Puerto Rico will be surveyed once during the three-year period. Results from the surveys will be used to understand satisfaction among individuals who attend SMP education sessions, as well as how the program can be improved to provide better service to its target population. Eighteen (18) unique states/territories will be surveyed in FY17, with each state or territory expected to generate 75 unique responses, for a total of 1,350 individual responses in Year 1. This process will then be replicated in Year 2 (FY18), with a different group of 18 states and territories being surveyed. In Year 3 (FY19), the final 17 states/territories will be surveyed. By the end of FY19, SMP will obtain 3,975 completed surveys to measure satisfaction at the national level (53 states/territories × 75 responses per state/territory). SMP will use the following factors to draw a representative sample of education session attendees:

- Randomly select 18 states and territories to be surveyed in Years 1 and 2 and 17 states/territories in Year 3, with the states/territories stratified by the average number of education session attendees per month.
- Survey a specific site no more than once.
- Sample from at least five presenters in each state/territory.
- Survey no fewer than five events and no more than 20 events in each state/territory.
- Survey no more than two events per month in each state/territory.

To generate a sample with a 95% confidence level at the national level, a minimum of 384 responses will be required, which is based on over 450,000 education session attendees in 2014. SMP anticipates collecting 75 completed surveys per state/territory, for a total collection of 3,975 completed surveys. This larger collection will enable ACL to make state-to-state comparisons, which is an important feature of this survey. Specifically, state-to-state comparisons will allow ACL to identify which states/territories are providing the best services to their beneficiaries, and what best practices can be shared across states/territories. The larger collection will also provide each state/territory with sufficient information to take local action to improve service within budgetary constraints.

The proposed survey instrument may be viewed on the ACL Web site: *http://www.acl.gov/Programs/CIP/OHIC/index.aspx*.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The average annual burden associated with these activities is summarized below:

Respondent type	Number of respondents	Responses per respondent	Average burden hours per response (hrs)	Total average annual burden (hrs)
Stratified Random Sample	1,325	1	5/60	110.4

Dated: October 27, 2016.

Edwin L. Walker,

Acting Administrator and Assistant Secretary for Aging.

[FR Doc. 2016–26923 Filed 11–7–16; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Administration on Intellectual and Developmental Disabilities, President's Committee for People With Intellectual Disabilities

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

DATES: Wednesday, November 30, 2016 from 9:00 a.m. to 5:00 p.m.; and Thursday, December 1, 2016 from 9:00 a.m. to 3:00 p.m.

These meetings will be open to the general public.

ADDRESSES: These meetings will be held in U.S. Department of Health and Human Services/Hubert H. Humphrey Building located at 200 Independence Avenue SW., Conference Room 505A, Washington, DC 20201. Individuals who would like to participate via conference call may do so by dialing toll-free #: 888–677–5620, when prompted enter pass code: 1697798. Individuals whose full participation in the meeting will require special accommodations (*e.g.,* sign language interpreting services, assistive listening devices, materials in alternative format such as large print or Braille) should notify Ms. Allison Cruz, Director, Office of Innovation, via email at *Allison.Cruz@acl.hhs.gov,* or via telephone at 202–795–7334, *no later than* Monday, November 18, 2016. The PCPID will attempt to accommodate requests made after this date, *but cannot guarantee the ability to grant requests received after the deadline.* All meeting sites are barrier free, consistent with the Americans with Disabilities Act (ADA) and the Federal Advisory Committee Act (FACA).

AGENDA: The Committee Members will discuss preparation of the PCPID 2017 Report to the President, including its content and format, and related data collection and analysis required to complete the writing of the Report. They will also receive presentations from selected experts in the field of Intellectual and Developmental Disabilities.

ADDITIONAL INFORMATION: For further information, please contact Ms. Allison Cruz, Director, Office of Innovation, 330 C Street SW., Switzer Building, Room 1114, Washington, DC 20201. Telephone: 202–795–7334. Fax: 202–795–7334. Email: *Allison.Cruz@acl.hhs.gov.*

SUPPLEMENTARY INFORMATION: The PCPID acts in an advisory capacity to the President and the Secretary of Health and Human Services on a broad range of topics relating to programs, services and support for individuals with intellectual disabilities. The PCPID executive order stipulates that the Committee shall: (1) Provide such advice concerning intellectual disabilities as the President or the Secretary of Health and Human Services may request; and (2) provide advice to the President concerning the following for people with intellectual disabilities: (A) Expansion of educational opportunities; (B) promotion of homeownership; (C) assurance of workplace integration; (D) improvement of transportation options; (E) expansion of full access to community living; and (F) increasing access to assistive and universally designed technologies.

Dated: October 27, 2016.

Aaron Bishop,

Commissioner, Administration on Disabilities (AoD)

[FR Doc. 2016–26880 Filed 11–7–16; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Proposed Collection; Public Comment Request; Evaluation of the State Health Insurance Assistance Program (SHIP)

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL) is announcing that the proposed collection of information listed above has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Comments must be received by December 8, 2016.

ADDRESSES: Submit written comments on the collection of information by fax 202.395.5806 or by email to *OIRA_submission@omb.eop.gov,* Attn: OMB Desk Officer for ACL.

FOR FURTHER INFORMATION CONTACT: Katherine Glendening by phone: 202–795–7350 or email: *Katherine.Glendening@acl.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with section 44 U.S.C. 3507, ACL has submitted the following proposed collection of information to OMB for review and clearance.

Proposed Collection: Evaluation of the State Health Insurance Assistance Program (SHIP), U.S. Department of Health and Human Services (HHS), U.S. Administration for Community Living (ACL).

Need and Use of Information Collection: The SHIP Customer Satisfaction Survey is a survey of individuals who meet with State Health Insurance Assistance Program (SHIP) Counselors to better understand their Medicare options. SHIP provides free, one-on-one counseling to the public, and the SHIP Customer Satisfaction Survey will be used to measure individuals' satisfaction with their counseling experience.

The State Health Insurance Assistance Program (SHIP) was created under Section 4360 of the Omnibus Budget Reconciliation Act (OBRA) of 1990 (P.L. 101–508). SHIP was created to provide grant funding to states/territories, who in turn provide ''. . . information, counseling, and assistance . . . to individuals who are eligible to receive benefits under title XVIII of the Social Security Act'' (Medicare). SHIP grants help Medicare beneficiaries and their families to obtain information about topics, such as Medicare enrollment (Parts A and B), Medicare Advantage plans (Part C), prescription drug coverage (Part D), Medicare Savings Programs (MSPs), supplemental insurance policies (Medigap), Medicaid issues, and other health insurance issues. The survey will gauge individuals' satisfaction with the services provided by SHIP counselors. While the SHIP program currently tracks the number of contacts the program makes with individual citizens, as well as descriptive information about counseling sessions such as topic, location, and beneficiary demographics, the program does not track outcome measurements, including customer satisfaction.

Comments in Response to the 60-Day Federal Register Notice

A notice was published in the **Federal Register** in Vol. 81, No. 124/Tuesday, June 28, 2016, Pages 41974–41975, announcing that ACL was requesting approval of a data collection (ICR New). No comments were received.

Estimated Data Burden

The SHIP survey will be conducted over a three-year period beginning in Fiscal Year 2017 (FY 2017), with sites in each of the 50 states, the District of Columbia and the territories of Guam, Puerto Rico and the U.S. Virgin Islands being surveyed once during the three-year period. Results from the surveys

will be used to understand satisfaction among individuals who receive SHIP Medicare assistance/counseling, as well, as how the program can be improved to provide better service to its target population. Eighteen (18) unique states/territories will be surveyed in FY 2017, with each state/territory expected to generate 75 unique responses, for a total of 1,350 individual responses in Year 1. This process will then be replicated in Year 2 (FY 2018) and Year 3 (FY 2019), with a different unique group of 18 states and territories being surveyed each year. By the end of FY19, SHIP will obtain 4,050 completed surveys to measure satisfaction at the state and national levels (18 states/territories × 75 responses per state × 3 years). SHIP will use the following factors to draw a representative sample of beneficiaries who received assistance/counseling:

- Review counseling sessions at two points each year:
  - ○ One week in the spring (outside of the annual Medicare Open Enrollment Period)
  - ○ One week in the fall (during the annual Medicare Open Enrollment Period)
- Focus only on non-redundant individuals (*i.e.,* a random sample without replacement of individuals who receive SHIP counseling).
- Randomly select 18 states and territories to be surveyed each year, with the states/territories stratified by data collection method* and the size of the Medicare-eligible population.

* Data collection method refers to how each state/territory collects and enters its records of counseling sessions. The majority of states/territories (29 of 54) directly enter counseling records into SHIP's National Performance Reporting (NPR) system, but the remaining states/territories upload data in batches at the end of each month. To ensure that the batch upload states/territories will be able to pull weekly samples twice per year, we will limit these states/territories to Years 2 and 3 of the survey administration period, thereby allowing for technical assistance to these states/territories if necessary.

To generate a sample with a 95% confidence level at the national level 384 responses will be required (n = 3,000,000 counseling sessions in 2015). SHIP anticipates collecting 75 completed surveys per state/territory, for a total collection of 4,050 completed surveys over the 3-year period. This larger collection will enable ACL to make state-to-state comparisons, which is an important feature of this survey. Specifically, state-to-state comparisons will allow ACL to identify which states/territories are providing the best services to their beneficiaries, and what best practices can be shared across states/territories. The larger collection will also provide each state/territory with sufficient information to take local action to improve service within budgetary constraints.

The proposed survey instrument may be viewed on the Web site: *http://www.acl.gov/Programs/CIP/OHIC/index.aspx*.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The average annual burden associated with these activities is summarized below:

Respondent type	Number of respondents	Responses per respondent	Average burden hours per response (hours)	Total average annual burden (hours)
Stratified Random Sample	1,350	1	8/60	180

Dated: October 27, 2016.

Edwin L. Walker,

Acting Administrator and Assistant Secretary for Aging.

[FR Doc. 2016–26924 Filed 11–7–16; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–3362]

Intent To Review a Study Data Standardization Plan Template; Notice of Availability; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability; request for comments.

SUMMARY: The Food and Drug Administration (FDA), Center for Drug Evaluation and Research, is establishing a public docket to collect comments related to a proposed Study Data Standardization Plan (SDSP) template. As part of FDA's ongoing collaboration with the Pharmaceutical Users Software Exchange (PhUSE), an independent, non-profit consortium addressing computational science issues, a PhUSE working group developed the PhUSE SDSP template. The purpose of this review is to evaluate the template and determine whether FDA will recommend its use either as is, or in a modified form, for regulatory submissions of study data. FDA is seeking public comment on the use of the PhUSE SDSP template for regulatory submissions.

DATES: Although you can comment on the PhUSE SDSP template at any time, to ensure that the Agency considers your comments in this review, please submit either electronic or written comments by January 9, 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–3362 for ''Intent to Review a Study Data Standardization Plan Template.'' 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: Crystal Allard, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 21, Rm. 1518, Silver Spring, MD 20993–0002, 301–796–8856, *crystal.allard@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is a participating member of PhUSE, an independent, non-profit consortium of academic, regulatory, non-profit, and private sector entities. PhUSE provides a global platform for the discussion of topics encompassing the work of biostatisticians, data managers, statistical programmers, and e-clinical information technology professionals, with the mission of providing an open, transparent, and collaborative forum to address computational science issues. As part of this collaboration, PhUSE working groups develop and periodically publish proposals for enhancing the review and analysis of human and animal study data submitted to regulatory agencies. You can learn more about PhUSE working groups at *http://www.phuse.eu/cs-working-groups.aspx.* (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.)

In December 2014, FDA published the Study Data Technical Conformance Guide (the ''Guide,'' available at *http://www.fda.gov/ForIndustry/DataStandards/StudyDataStandards/default.htm*), which contains technical recommendations to sponsors for the submission of animal and human study data and related information in a standardized electronic format. In section 2.1 of the Guide, FDA recommends that sponsors should include a plan (*e.g.,* in the IND) describing the submission of standardized study data to FDA. FDA's Study Data Standards Resources Web page provides recommendations for preparing an SDSP (*http://www.fda.gov/downloads/ForIndustry/DataStandards/StudyDataStandards/UCM447119.pdf*).

FDA now intends to review the PhUSE SDSP template, a deliverable of the working group effort described previously in this document, with the potential result that FDA could recommend the use of the template in its current form, or in a modified form, for use in the regulatory submission of study data in conformance with the Guide. FDA invites public comment on all matters regarding the use of the PhUSE SDSP template.

II. Electronic Access

The PhUSE SDSP template is available at: *http://www.phusewiki.org/wiki/images/e/ea/SDSP_Template.pdf.*

Dated: November 2, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–26913 Filed 11–7–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–0743]

Medical Device Reporting for Manufacturers; 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) is announcing the availability of the guidance entitled ''Medical Device Reporting for Manufacturers; Guidance for Industry and Food and Drug Administration Staff.'' This guidance document is intended to assist medical device manufacturers meet applicable reporting and recordkeeping requirements for certain device-related adverse events and malfunctions.

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–2013–D–0743 for ''Medical Device Reporting for Manufacturers''. 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 ''Medical Device Reporting for Manufacturers'' 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: Isaac Chang, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3114, Silver Spring, MD 20993–0002, 301–796–2789.

SUPPLEMENTARY INFORMATION:

I. Background

Medical device reporting under section 519(a) of the Federal Food Drug, and Cosmetic Act (21 U.S.C. 360i(a)) provides a mechanism that allows FDA and device manufacturers, user facilities, and importer of medical devices to identify and monitor adverse events (deaths and serious injuries) and certain malfunctions involving your medical devices. The goal is to detect and correct problems in a timely manner. This guidance updates FDA's policy and clarifies FDA's interpretations of the regulatory requirements under part 803 (21 CFR part 803) and includes a section on common reporting errors.

The draft of this guidance was made available in the **Federal Register** on July 9, 2013 (78 FR 41069), and the comment period closed October 7, 2013. FDA reviewed and considered all public comments received and revised the guidance as appropriate.

This document supersedes the draft entitled, ''Medical Device Reporting for Manufacturers; Guidance for Industry and Food and Drug Administration Staff,'' dated July 9, 2013, and the previous guidance on this topic, ''Medical Device Reporting for Manufacturers,'' issued March 1997.

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 medical device reporting. 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 ''Medical Device Reporting for Manufacturers; Guidance for Industry and Food and Drug Administration Staff'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1828 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 parts 801 and 809, regarding labeling, have been approved under OMB control number 0910–0485; the collections of information in part 803, regarding medical device reporting, have been approved under OMB control number 0910–0437; the collections of information in 21 CFR part 806, regarding corrections and removals, have been approved under OMB control number 0910–0359; the collections of information in 21 CFR part 807, subpart E, regarding premarket notification,

have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 812, regarding investigational device exemptions, have been approved under OMB control number 0910–0078; the collections of information in 21 CFR part 814, subparts A through E, regarding premarket approval, have been approved under OMB control number 0910–0231; the collections of information in 21 CFR part 820, regarding quality system regulations, have been approved under OMB control number 0910–0073; the collections of information regarding MedWatch: The Food and Drug Administration Medical Products Reporting Program have been approved under OMB control number 0910–0291; and the collections of information regarding the Adverse Event Program for Medical Devices (Medical Product Safety Network (MedSun)) have been approved under OMB control number 0910–0471.

Dated: November 3, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–26933 Filed 11–7–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0075]

Non-Inferiority Clinical Trials To Establish Effectiveness; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a guidance for industry entitled ''Non-Inferiority Clinical Trials to Establish Effectiveness.'' This document provides guidance to sponsors and applicants submitting investigational new drug applications (INDs), new drug applications (NDAs), biologics licensing applications (BLAs), or supplemental applications on the appropriate use of non-inferiority (NI) study designs to provide evidence of the effectiveness of a drug or biologic. The guidance gives advice on when NI studies demonstrating effectiveness of an investigational drug can provide interpretable results, how to choose the NI margin, and how to test the NI hypothesis.

DATES: Submit either electronic or written comments on Agency guidances 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–2010–D–0075 for ''Non-Inferiority Clinical Trials to Establish Effectiveness; Guidance for Industry.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

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

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

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002 or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Scott Goldie, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire

Ave., Bldg. 21, Rm. 3557, Silver Spring, MD 20993–0002, 301–796–2055; or Robert Temple, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 4212, Silver Spring, MD 20993–0002, 301–796–2270; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Non-Inferiority Clinical Trials to Establish Effectiveness.'' This guidance consists of four parts. The first part is a general discussion of regulatory, study design, scientific, and statistical issues associated with the use of NI studies to establish the effectiveness of a drug or biologic. The second part focuses on some of these issues in more detail, notably the statistical approaches used to determine the NI margin and to test for non-inferiority. The third part addresses commonly asked questions about NI studies. The fourth part includes four examples of successful and unsuccessful efforts to define NI margins and test for non-inferiority.

This guidance finalizes the draft guidance for industry, ''Non-Inferiority Clinical Trials,'' published in 2010. In addition, it supersedes the guidance for industry, ''Antibacterial Drug Products: Use of Noninferiority Trials to Support Approval,'' also published in 2010, which will be withdrawn.

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 NI clinical trials to establish effectiveness. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Electronic Access

Persons with access to the Internet may obtain the guidance at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm; http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm;* or *http://www.regulations.gov.*

Dated: November 3, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–26931 Filed 11–7–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–P–2674]

Determination That CALAN SR (Verapamil Hydrochloride) Extended-Release Oral Tablet, 180 Milligrams, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) has determined that CALAN SR (verapamil hydrochloride) extended-release oral tablet, 180 milligrams (mg), was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for verapamil hydrochloride extended-release oral tablet, 180 mg, if all other legal and regulatory requirements are met.

FOR FURTHER INFORMATION CONTACT: Stacy Kane, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6236, Silver Spring, MD 20993–0002, 301–796–8363.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

CALAN SR (verapamil hydrochloride) extended-release oral tablet, 180 mg, is the subject of NDA 019152 held by Pfizer Inc. CALAN SR is indicated for the treatment of hypertension, to lower blood pressure. CALAN SR (verapamil hydrochloride) extended-release oral tablet, 180 mg, is currently listed in the ''Discontinued Drug Product List'' section of the Orange Book.

Heritage Pharma Labs, Inc., submitted a citizen petition dated August 31, 2016 (Docket No. FDA–2016–P–2674), under 21 CFR 10.30, requesting that the Agency determine whether CALAN SR (verapamil hydrochloride) extended-release oral tablet, 180 mg, was withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records, and based on the information we have at this time, FDA has determined under § 314.161 that CALAN SR (verapamil hydrochloride) extended-release oral tablet, 180 mg, was not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that CALAN SR (verapamil hydrochloride) extended-release oral tablet, 180 mg, was withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of CALAN SR (verapamil hydrochloride) extended-release oral tablet, 180 mg, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have found no information that would indicate that this drug product was withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list CALAN SR (verapamil hydrochloride) extended-release oral

tablet, 180 mg, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to CALAN SR (verapamil hydrochloride) extended-release oral tablet, 180 mg, may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: November 3, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–26932 Filed 11–7–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–3631]

Ninth Annual Sentinel Initiative; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public workshop entitled ''Ninth Annual Sentinel Initiative Public Workshop.'' Convened by the Duke-Margolis Center for Health Policy at Duke University and supported by a cooperative agreement with FDA, this 1-day workshop will bring the stakeholder community together to discuss a variety of topics on active medical product surveillance. Topics will include an update on the state of FDA's Sentinel Initiative, including an overview of the current state of Sentinel System safety surveillance activities, and uses of the Sentinel System accomplished in 2016. In addition, panelists will discuss the future of the Sentinel System and opportunities to expand its medical product surveillance capabilities. This workshop will also engage stakeholders to discuss current and emerging Sentinel Initiative projects.

DATES: The public workshop will be held on February 2, 2017, from 9 a.m. to 4:30 p.m., Eastern Standard Time (EST). Submit either electronic or written comments by March 2, 2017.

ADDRESSES: *Location:* The public workshop will be held at the Barbara Jordan Conference Center at the Kaiser Family Foundation, 1330 G St. NW., Washington, DC 20005. For additional travel and hotel information, please refer to *https://healthpolicy.duke.edu/events/ninth-annual-sentinel-initiative-public-workshop.* FDA has verified the meeting Web site addresses throughout this notice, but FDA is not responsible for subsequent changes to the Web sites after this document publishes in the **Federal Register**. There will also be a live Webcast for those unable to attend the meeting in person (see *Streaming Webcast of the Public Workshop*).

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–3631 for ''Ninth Annual Sentinel Initiative; Public Workshop.'' 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: Carlos Bell, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 4343, Silver Spring, MD 20993–0002, 301–796–3714, FAX: 301–796–9832, email: *SentinelInitiative@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Registration: To attend the public workshop, you must register before February 2, 2017, by visiting *https://healthpolicy.duke.edu/events/ninth-annual-sentinel-initiative-public-workshop.* You may also register for the live Webcast by visiting this Web page. There will be no onsite registration. When registering, please provide the following information: Your name, title, company or organization (if applicable), postal address, telephone number, and email address. Those without Internet access should contact Carlos Bell to register (See **FOR FURTHER INFORMATION CONTACT**). There is no registration fee for the public workshop. However, registration will be on a first-come, first-served basis because seating is limited. Therefore, early registration is recommended. Upon registering, attendees will receive an confirmatory email, containing event materials. A 1-hour lunch break is scheduled, but food will not be provided. There are multiple restaurants within walking distance of the Barbara Jordan Conference Center at the Kaiser Family Foundation.

If you need special accommodations due to a disability, please contact Joanna Higgison at the Duke-Margolis Center for Health Policy (phone: 908–432–4872, email: *joanna.higgison@duke.edu*) at least 7 days in advance.

Streaming Webcast of the Public Workshop: This public workshop will also be Webcast (archived video footage will be available following the workshop at *https://healthpolicy.duke.edu/events/ninth-annual-sentinel-initiative-public-workshop*). Persons interested in viewing the live Webcast must register online by February 1, 2017, at 5 p.m. EST. Early registration is recommended because Webcast connections are limited. Organizations are requested to register all participants, and view the workshop using one connection per location whenever possible. Webcast participants will be sent technical system requirements upon registering. Prior to joining the streaming Webcast of the public workshop, it is recommended that you review these technical system requirements.

Meeting Materials: All event materials will be sent to registered attendees via email before the workshop. The event materials will also be available to view on the Duke-Margolis Web site at *https://healthpolicy.duke.edu/events/ninth-annual-sentinel-initiative-public-workshop.*

Transcripts: Please be advised that transcripts will not be available.

Dated: November 3, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–26934 Filed 11–7–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request; The Advanced Education Nursing Traineeship (AENT) Program Specific Data Collection Forms

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995), HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than January 9, 2017.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N39, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Information Collection Clearance Officer at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: The Advanced Education Nursing Traineeship (AENT) Program Specific Data Collection Forms.

OMB No. 0915–0375, Revision

Abstract: The Advanced Nursing Education Workforce (ANEW) Program is a new program that incorporates elements of the AENT and the Advanced Nursing Education Programs. The current OMB approved Program Specific Data Collection Forms for the former AENT Program will be simplified and used for the ANEW program.

HRSA provides advanced education nursing grants to educational institutions to increase the numbers of advanced education nurses through the ANEW Program. The ANEW Program is authorized by Title VIII, Section 811(a)(2) of the Public Health Service Act, (42 U.S.C. 296j(a)(2)), as amended by Section 5308 of the Patient Protection and Affordable Care Act of 2010, Public Law 111–148. This renewal with revision request includes the Project Abstract, Program Narrative, Attachments, and Tables. The proposed ANEW tables are very similar to the previous AENT tables and include information on program participants such as the projected number of enrollees/trainees receiving traineeship support, projected number of graduates receiving traineeship support for the previous fiscal year, the types of programs they are enrolling into and/or from which enrollees/trainees are graduating, and the distribution of primary care nurse practitioners, primary care clinical nurse specialists, and nurse-midwives who plan to practice in rural and underserved settings. To reduce the reporting burden for applicants, HRSA simplified the tables to focus on the types of providers and practice settings that are included in the statute to determine whether applicants qualify for the preference or special consideration in making awards for this program.

Need and Proposed Use of the Information: The Project Abstract is often distributed to provide information to the public and Congress. HRSA will use this information in determining the eligibility for the statutory funding preference and special consideration and to succinctly capture data for the number of projected students for subsequent years in the project period.

Likely Respondents: Likely respondents are potential applicants for the ANEW program. Eligible applicants for the ANEW program include entities that provide registered nurses with primary care nurse practitioner (NP), primary care clinical nurse specialist (CNS), and nurse-midwife education. Such programs may include accredited schools of nursing, nursing centers, academic health centers, state or local governments, and other public or private nonprofit entities authorized by the Secretary of HHS to confer degrees to RNs for primary care NP, primary care CNS, or nurse-midwife education. Federally recognized Indian Tribal Government and Native American Organizations as well as faith-based or

community-based organizations may apply if they are otherwise eligible.

Eligible state government entities include the 50 states, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Northern Mariana Islands, American Samoa, the U.S. Virgin Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this Information Collection Request are summarized in the table below.

Total Estimated Annualized Burden Hours:

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
ANEW Application including the ANEW Program Specific Tables and Attachments	236	1	236	7	1,652
Total	236	1	236	7	1,652

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Jason E. Bennett,

Director, Division of the Executive Secretariat.

[FR Doc. 2016–26893 Filed 11–7–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; NCI Genomic Data Commons (GDC) Data Submission Request Form (National Cancer Institute)

AGENCY: National Institutes of Health.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995 to provide opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI) will publish periodic summaries of propose projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Louis M. Staudt, MD, Ph.D., Director, Center for Cancer Genomics, National Cancer Institute, Building 10 Room 5A02, 10 Center Drive, Bethesda MD 20814 or call non-toll-free number 301–402–1892 or Email your request, including your address to: *lstaudt@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires: written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function 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, 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 minimizes the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Proposed Collection Title: NCI Genomic Data Commons (GDC) Data Submission Request Form, 0925–NEW, National Cancer Institute (NCI), National Institutes of Health (NIH).

Need and Use of Information Collection: The purpose of the NCI Genomic Data Commons (GDC) Data Submission Request Form is to provide a vehicle for investigators to request submission of their cancer genomic data into the GDC in support of data sharing. The purpose is to also provide a mechanism for the GDC Data Submission Review Committee to review and assess the data submission request for applicability to the GDC mission. The scope of the form involves obtaining information from investigators that: (1) Would like to submit data about their study into the GDC, (2) are affiliated with studies that adhere to GDC data submission conditions. The benefits of the collection are that it provides the needed information for investigators to understand the types of studies and data that the GDC supports, and that it provides a standard mechanism for the GDC to assess incoming data submission requests.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 50 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hour
Investigator	200	1	15/60	50
Total	200	200		50

Dated: November 1, 2016.

Karla Bailey,

Project Clearance Liaison, National Cancer Institute, National Institutes of Health.

[FR Doc. 2016–26891 Filed 11–7–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of meetings of the National Advisory Council for Human Genome Research.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The 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 Advisory Council for Human Genome Research.

Date: February 6–7, 2017.

Closed: February 06, 2017, 8:00 a.m. to 10:00 a.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Terrace Level Conference Room, 5635 Fishers Lane, Bethesda, MD 20892.

Open: February 06, 2017, 10:00 a.m. to 4:00 p.m.

Agenda: To discuss matters of program relevance.

Place: National Institutes of Health, Terrace Level Conference Room, 5635 Fishers Lane, Bethesda, MD 20892.

Closed: February 06, 2017, 4:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Terrace Level Conference Room, 5635 Fishers Lane, Bethesda, MD 20892.

Closed: February 07, 2017, 8:00 a.m. to Adjournment.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Terrace Level Conference Room, 5635 Fishers Lane, Bethesda, MD 20892.

Contact Person: Rudy O. Pozzatti, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, (301) 402–0838, *pozzattr@mail.nih.gov.*

Name of Committee: National Advisory Council for Human Genome Research.

Date: May 8–9, 2017.

Closed: May 08, 2017, 8:00 a.m. to 10:00 a.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Terrace Level Conference Room, 5635 Fishers Lane, Bethesda, MD 20892.

Open: May 08, 2017, 10:00 a.m. to 4:00 p.m.

Agenda: To discuss matters of program relevance.

Place: National Institutes of Health, Terrace Level Conference Room, 5635 Fishers Lane, Bethesda, MD 20892.

Closed: May 08, 2017, 4:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Terrace Level Conference Room, 5635 Fishers Lane, Bethesda, MD 20892.

Closed: May 09, 2017, 8:00 a.m. to Adjournment.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Terrace Level Conference Room, 5635 Fishers Lane, Bethesda, MD 20892.

Contact Person: Rudy O. Pozzatti, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, (301) 402–0838, *pozzattr@mail.nih.gov.*

Name of Committee: National Advisory Council for Human Genome Research.

Date: September 11–12, 2017.

Closed: September 11, 2017, 8:00 a.m. to 10:00 a.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Terrace Level Conference Room, 5635 Fishers Lane, Bethesda, MD 20892.

Open: September 11, 2017, 10:00 a.m. to 4:00 p.m.

Agenda: To discuss matters of program relevance.

Place: National Institutes of Health, Terrace Level Conference Room, 5635 Fishers Lane, Bethesda, MD 20892.

Closed: September 11, 2017, 4:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Terrace Level Conference Room, 5635 Fishers Lane, Bethesda, MD 20892.

Closed: September 12, 2017, 8:00 a.m. to Adjournment.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Terrace Level Conference Room, 5635 Fishers Lane, Bethesda, MD 20892.

Contact Person: Rudy O. Pozzatti, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, (301) 402–0838, *pozzattr@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *http://www.genome.gov/11509849*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: November 2, 2016.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–26892 Filed 11–7–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork

Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer at (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Assessment of the Communities Talk: Town Hall Meetings To Prevent Underage Drinking—(OMB No. 0930–0288)—Revision

The Substance Abuse and Mental Health Services Administration/Center for Substance Abuse Prevention (SAMHSA/CSAP) is requesting a revision from the Office of Management and Budget (OMB) of the information collection regarding the Assessment of the Communities Talk: Town Hall Meetings to Prevent Underage Drinking. The current data collection has approval under OMB No. 0930–0288, Assessment of the Town Hall Meetings on Underage Drinking Prevention, which expires on January 31, 2017. Revisions were made to the two existing data collection instruments: The Organizer Survey and the Participant Form (English and Spanish versions). SAMHSA is requesting to add a new data collection instrument titled the Organizer Survey—6 month Follow-up, in which hosts of the Communities Talk events will opt in to provide information on any actions that were taken as result of the Communities Talk event.

Changes

Under the current approval, the Organizer Survey consists of 30 items. Under this revision, the Organizer Survey includes 20 items about the Communities Talk event. The following table provides a summary of the proposed changes to the instrument.

Current question/item	Changes
Wording change for THM	Changed throughout to 'Communities Talk'.
q2—Location of event	Added Zip Code as a response option (new q2).
q4—Length of event	Question updated and entry field [*(fill in)]* (new q3).
q8—Other topics discussed (fill in)	Slight wording change of question; added the words 'non-alcohol-related . . . (What non-alcohol-related topics); added as a secondary question to new q12.
q9—Promotion of the event	Dropped 'in the community' from the question and updated the response options (new q8).
q10—Number of event attendees	Provided clarification for physical and virtual attendees (new q9).
q13—Topics discussed at the event	Slight wording change of question; added the words 'alcohol-related' (. . . following alcohol-related topics . . .); response options updated (new q13).
q14—Use of materials from *www.stopalcoholabuse.gov*	Updated website address (new q17).
q16—Planned activities as a result of the event	Updated question and response options (new q15).
q17—Satisfaction with event	Question deleted.
q18/q19—Participation in event-related webinar and identification of that event.	Question deleted.
q20/q21—Viewing of online training and identification of that training.	Question deleted.
q22—Utility of training to organization's prevention work	Updated lead-in to statements; updated wording to be properly aligned with the training and technical assistance performance measures for science and service activities (changed from . . . my organization's . . . [to] . . . your organization's. . .) (new q18).
q23—Improved capacity due to the training received	Updated wording to be properly aligned with the training and technical assistance performance measures for science and service activities (added the word 'that' to . . .training that I received . . .) (new q18).
q24/q25—Technical assistance (TA) received and how submitted request for TA.	Question deleted.
q26—Utility of TA to organization's prevention work	Updated lead-in to statements; wording to be properly aligned with the training and technical assistance performance measures for science and service activities (changed from . . . my organization's . . . [to] . . . your organization's) (new q18).
q27—Improved capacity due to the TA received	Updated wording to be properly aligned with the training and technical assistance performance measures for science and service activities (added the word 'that' to . . . TA that I received . . .) (new q18).
q28—Share additional information about event	Removed the word 'us' (. . . share with any other . . .) (new q19).
q29/q30—Data collected about event and sharing of data with SAMHSA, including information on where to send the data.	Updated questions and mailing information (new q20 and secondary question to new q20).

Three new questions were added pertaining to what influenced the decision to host an event (new q5), perception of how important UAD and its consequences is to the community (new q14), and agreement with mobilization actions statements (new q16).

The revisions were necessary to better align the data gathered to the short-term and long-term outcomes of the Communities Talk for event hosts, specifically—

Short-Term

- Increase utility of training.
- Increase utility of technical assistance.

Long-Term

- Increase national conversations about UAD.
- Increase youth involvement in UAD.
- Increase community mobilization for UAD prevention.
- Increase organization capacity for prevention.
- Increase use of evidence-based approaches to UAD prevention.

Changes were also made to the Participant Form. Under the current approval, the Participant Form consists of 14 items. Under this revision, the Participant Form includes 17 items about the Communities Talk event. The following table provides a summary of the proposed changes to the instrument, in English and Spanish.

Current question/item	Changes
Wording change for THM	Changed throughout to 'Communities Talk'.
q2—Location of event	Added Zip Code as a response option (new q2).
q3—Most important UAD issues facing community	Question wording change and response options updated (new q3).
q5—Learn anything about UAD and its associated problems before attending the event.	Slight wording change of question, added the word 'new' (. . . learn anything new . . .) (new q5).
q7—Sharing of materials or lessons learned from the event	Response options updated (new q8).
q9—How will become more involved in decreasing UAD in community	Question wording change and response options updated (new q11).
q10—Gender	Updated to say 'sex' (new q13).
q13—Race	Updated order of response options (new q16).

Three new questions were added surrounding how often respondents are involved in UAD prevention in the community (new q9), likelihood will become more involved in UAD prevention in the community (new q10), and agreement with mobilization actions statements (new q12).

The revisions were necessary to better align the data gathered to the short-term and long-term outcomes of the Communities Talk, specifically—

Short-Term

- Increase knowledge of UAD prevention.
- Increase intentions to share information on UAD prevention.

Long-Term

- Increase national conversations about UAD.
- Increase youth involvement in UAD.
- Increase community mobilization for UAD prevention.

CBOs that opt in to be contacted 6 months after completing the Organizer Survey for SAMHSA to follow up on any actions that were taken as a result of the Communities Talk event in their community will be provided with the Organizer Survey—6 month Follow-up. This survey will allow SAMHSA to measure progress towards the short- and long-term outcomes of the Communities Talk, specifically—

Short-Term

- Increase utility of training.
- Increase utility of technical assistance.

Long-Term

- Increase national conversations about UAD.
- Increase youth involvement in UAD prevention.
- Increase community mobilization for UAD prevention.
- Increase capacity for prevention organizers.
- Increase use of evidence-based approaches to UAD prevention.

The Organizer Survey—6 month Follow-up consists of 13 items and captures information on—

- Where the Communities Talk event was held;
- Awareness of UAD activities that have taken place as a result of the event;
- Community mobilization and collaboration efforts;
- Perception of the importance of UAD and its consequences to the community; and
- Increase in youth involvement in UAD prevention activities in the community.

SAMHSA supports nationwide Communities Talk events every other year. Collecting data on each round of Communities Talk events, and using this information to inform policy and measure impact, supports SAMHSA's strategic initiative number 1: Prevention of substance use and mental illness. A specific goal under this initiative is to prevent or reduce the consequences of UAD and adult problem drinking; a specific objective is to establish the prevention of UAD as a priority issue for states, territories, tribal entities, colleges and universities, and communities.

SAMHSA will use the information collected to document the implementation efforts of this nationwide initiative, determine if the federally sponsored Communities Talk events lead to additional activities within the community that are aimed at preventing and reducing UAD, identify what these activities may possibly include, and help plan for future rounds of Communities Talk events. SAMHSA intends to post online a summary document of each round of Communities Talk events and present findings at national conferences attended by CBOs that have hosted these events and might host future events. Similarly, SAMHSA plans to share findings with the Interagency Coordinating Committee on the Prevention of Underage Drinking. Agencies within this committee encourage their grantees to participate as the event hosts.

Additionally, the information collected will support performance measurement for SAMHSA programs under the Government Performance Results Act (GPRA).

Data Collection Component

SAMHSA/CSAP will use a web-based method to collect data through the Organizer Survey and Organizer Survey—6 month Follow-up, and a paper-and-pencil approach to collect data through the Participant Form. The web-based application will comply with the requirements of Section 508 of the Rehabilitation Act to permit accessibility to people with disabilities.

Every 2 years, the Organizer Survey will be completed by an estimated 500 Communities Talk event organizers and will require only one response per respondent. It will take an average of 10 minutes (0.167 hours) to review the instructions and complete the survey. Similarly, the Organizer Survey—6 month Follow-up will be completed by an estimated 500 Communities Talk event organizers and will require only one response per respondent. It will take an average of 15 minutes (0.25 hours) to review the instructions and complete the survey. This burden estimate is based on comments from three 2016 Communities Talk even hosts who reviewed the survey and

provided comments on how long it would take them to complete it.

The Participant Form will be completed by an average of 30 participants per sampled community-based organization (n = 400) and will require only one response per respondent. It will take an average of 5 minutes (0.083 hours) to review the instructions and complete the form.

ESTIMATED ANNUALIZED BURDEN TABLE

Form name	Number of respondents	Responses per respondent	Total responses	Hours per response	Total hour burden
Organizer Survey	500	1	500	0.167	83.50
Organizer Survey—6 month Follow-up	500	1	500	0.25	125.00
Participant Form	4,500	1	4,500	0.083	373.50
Total	5,500		5,500		582.00

Send comments to Summer King, SAMHSA Reports Clearance Officer, 5600 Fishers Lane, Room 15E57–B, Rockville, Maryland 20857, *OR* email a copy to *summer.king@samhsa.hhs.gov.* Written comments should be received by January 9, 2017.

Summer King,

Statistician.

[FR Doc. 2016–26968 Filed 11–7–16; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of Inspectorate America Corporation, as a Commercial Gauger

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of approval of Inspectorate America Corporation as a commercial gauger.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Inspectorate America Corporation has been approved to gauge petroleum and certain petroleum products for customs purposes for the next three years as of February 17, 2016.

DATES: *Effective Date:* The approval of Inspectorate America Corporation as commercial gauger became effective on February 17, 2016. The next triennial inspection date will be scheduled for February 2019.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.13, that Inspectorate America Corporation, 2184 Jefferson Highway, Lutcher, LA 70071, has been approved to gauge petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13. Inspectorate America Corporation is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
11	Physical Properties Data.
12	Calculations.
17	Marine Measurement.

Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: November 1, 2016.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2016–26960 Filed 11–7–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of King Laboratories, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of King Laboratories, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that King Laboratories, Inc., has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of July 12, 2016.

DATES: *Effective Date:* The accreditation and approval of King Laboratories, Inc., as commercial gauger and laboratory became effective on July 12, 2016. The next triennial inspection date will be scheduled for July 2019.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that King Laboratories, Inc., 1515 West Hillsborough Ave., Tampa, FL 33603, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. King Laboratories, Inc., is approved for the following gauging procedures for petroleum and certain

petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
9	Density Determination.
12	Calculations.
17	Marine Measurement.

King Laboratories, Inc., is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–02	D 1298	Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method.
27–08	D 86	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.
27–53	D 2709	Standard Test Method for Water and Sediment in Middle Distillate Fuels by Centrifuge.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: November 1, 2016.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2016–26959 Filed 11–7–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2016–0071]

Privacy Act of 1974; Department of Homeland Security United States Citizenship and Immigration Services–005 Intercountry Adoptions Security System of Records

AGENCY: Department of Homeland Security, Privacy Office.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security (DHS) proposes to update and reissue a current DHS system of records titled, ''DHS/United States Citizenship and Immigration Services (USCIS)–005 Intercountry Adoptions Security'' system of records. DHS/USCIS collects, uses, and maintains Intercountry Adoptions Security records on prospective adoptive parents and other individuals associated with an intercountry adoption-related application or petition.

DHS/USCIS is updating this system of records to: Clarify the information technology used to process intercountry adoption-based applications and petitions; update the categories of individuals in the system; clarify the categories of records in the system; update the legal authorities for the intercountry adoption immigration process from countries that are party to the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Adoption Convention) and from non-Hague Adoption Convention (orphan) countries; reflect an increased retention period for intercountry adoption records; include all sources of records for adoption-based forms used in the Hague Adoption Convention process and non-Hague (orphan) process; and add Routine Use R, which permits the disclosure of information to the Department of Health and Human Services. Additionally, this notice includes non-substantive changes to simplify the formatting and text of the previously published notice.

This updated system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before December 8, 2016. This updated system will be effective December 8, 2016.

ADDRESSES: You may submit comments, identified by docket number DHS–2016–0071 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–343–4010.
- *Mail:* Jonathan R. Cantor, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, please visit *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Donald K. Hawkins, (202) 272–8000, Privacy Officer, U.S. Citizenship and Immigration Services, 20 Massachusetts Avenue NW., Washington, DC 20529. For privacy questions, please contact: Jonathan R. Cantor, (202) 343–1717, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the DHS/USCIS proposes to update and reissue a current DHS system of records titled, ''DHS/USCIS–005 Intercountry Adoptions Security'' system of records.

DHS/USCIS oversees certain intercountry adoption-related requests from U.S. citizens seeking to adopt a child from a foreign country and bring that child to the United States to permanently live with them. The intercountry adoption process is a cooperative effort between USCIS and the Department of State (DOS). USCIS plays a vital role in the intercountry adoption process by determining the suitability and eligibility of a prospective adoptive parent to adopt, and by determining the eligibility of a child to immigrate as an immediate relative of a U.S. citizen under 8 U.S.C. 1101(b)(1)(F) or (G). USCIS receives and adjudicates both domestic and internationally-filed applications and

petitions related to intercountry adoptions. DHS delegated authority to DOS to approve certain adoption-related petitions on behalf of USCIS. The Department of State also adjudicates the application for an immigrant visa for the child, which permits the child to immigrate into the United States.

USCIS uses two information technology (IT) systems to process intercounty adoption filings, depending on whether the intercounty adoption application was filed domestically or internationally. The USCIS National Benefits Center (NBC) processes all Hague and domestically-filed orphan intercountry adoption filings. USCIS uses the National Benefits Center's Adoption Case Management System (ACMS) within the National Processing Workflow Repository (NPWR) as the case management system for domestically filed intercountry adoption-based applications and petitions from receipt of the application or petition to final adjudication. USCIS uses the Case and Activity Management for International Operations (CAMINO) system to process applications and petitions filed internationally with USCIS international offices. Previously, USCIS used the Secure Information Management Service (SIMS) to track and review intercountry adoption cases. SIMS, however, did not fully meet the case tracking requirements of the intercountry adoption process. USCIS decommissioned SIMS after the launch of these systems.

USCIS is updating this system of records to: (1) Identify the Adoptions Case Management System (ACMS) and Case and Activity Management for International Operations (CAMINO) as the information technology systems used to process intercountry adoption-based applications and petitions; (2) update the categories of individuals in the system to include other individuals whose presence in the residence of the prospective adoptive parent(s) (known as the Adult Household Member) as relevant to determine suitability; (3) clarify the categories of record in the system; (4) update the legal authorities for the intercountry adoption immigration process to include the Intercountry Adoption Universal Accreditation Act of 2012 (UAA) (Pub. L. 112–276), which went into effect on July 14, 2014; (5) reflect a reduced retention period from 75 years to 25 and 15 years for internationally and domestically, respectively, filed intercountry adoption applications and petitions; (6) update the sources of records to include Hague petition and application forms (*i.e.,* Form I–800 and Form I–800A); and (7) add Routine Use R, which permits the disclosure of information to the Department of Health and Human Services. Additionally, this notice includes non-substantive changes to simplify the formatting and text of the previously published notices.

Consistent with DHS's information-sharing mission, information stored in the DHS/USCIS–005 Intercountry Adoptions Security may be shared with other DHS components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, when appropriate, information may be shared with appropriate Federal, State, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this system of records notice unless disclosure is otherwise prohibited under the confidentiality statutes, regulations, or policies applicable to that information.

This updated system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which Federal Government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals when systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors.

Below is the description of the DHS/USCIS–005 Intercountry Adoptions Security System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

System of Records

Department of Homeland Security (DHS)/United States Citizenship and Immigration Services (USCIS)-005

System name:

DHS/USCIS–005 Intercountry Adoptions Security

SECURITY CLASSIFICATION:

Unclassified, Sensitive.

SYSTEM LOCATION:

Intercountry adoption records are maintained in the ACMS or CAMINO IT systems and associated electronic and paper files located at the USCIS NBC, service centers, and domestic and international field offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include:

(1) All individuals, including the applicant or petitioner (and spouse, if married), seeking an intercountry adoption through the Hague Adoption Convention process or non-Hague orphan process;

(2) All individuals who meet the definition of an adult member of the household; [1]

(3) Any other individual whose presence in the applicant's or petitioner's residence is relevant to the suitability of the prospective adoptive parent(s) suitability to adopt;

(4) Representatives, including attorneys, adoption service providers, and form preparers, of the prospective adoptive parent(s);

(5) Children being adopted; and

(6) Birth mothers, fathers, or custodians of adopted children.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information about the prospective adoptive parent(s) may include:

- Full Name;
- Alias(es);
- Gender;
- Physical and mailing address;
- Address abroad;
- Email address;
- Telephone number;
- Physical Description (*e.g.,* height, weight, eye color, hair color, race, ethnicity, identifying marks like tattoos or birthmarks);
- Biometric (*i.e.,* fingerprints and photographs) and other information (*i.e.,* race, ethnicity, weight, height, eye color, hair color) collected to conduct background checks;

[1] Adult member of the household is defined as: (1) Any individual, other than the applicant, who has the same principal residence as the applicant and who had reached his or her 18th birthday on or before the date the form is filed; or (2) any person who has not yet reached his or her 18th birthday before the date the form is filed, or who does not actually live at the same residence, but whose presence in the residence is relevant to the issue of suitability to adopt, if the officer adjudicating the form concludes, based on the facts of the case, that it is necessary to obtain an evaluation of how that persons presence in the home affects the determination whether the applicant is suitable as the adoptive parent(s) of a Convention adoptee.

- Date of birth;
- Country of birth;
- City of birth;
- State or Province of birth;
- Citizenship status;
- Naturalization history;
- Certificate of Citizenship or Certificate of Naturalization Number;
- Residence status;
- Marital history and status;
- Spouse's immigration status;
- USCIS Online Account Number;
- Social Security number (SSN);
- A-Number;
- USCIS Receipt/Case Number;
- Passport number;
- Country of adoption;
- Adoption filing history;
- Payments made and anticipated future payments in relation to the adoption;
- Criminal history;
- Photographs;
- Accommodations/Disabilities;
- Home study;
- Medical and Social History (*e.g.,* vaccinations, referrals, communicable diseases, physical or mental disorders);[2]
- Financial Information (*e.g.,* income, expenses, scholarships, savings, assets, property, financial support, supporter information, life insurance, debts, encumbrances, tax records);
- Supporting Documentation as necessary (*e.g.,* birth, marriage, divorce certificates; licenses; academic diplomas; academic transcripts; appeals or motions to reopen or reconsider decisions; explanatory statements; deoxyribonucleic acid (DNA) results; and unsolicited information submitted voluntarily by the benefit requestor or family members in support of a benefit request);
- Proof of Citizenship (*i.e.,* unexpired passport, citizenship/naturalization certificate, school records, census records, church records, and affidavits);
- Proof of Marriage and termination of previous marriages;
- Criminal and National Security Background Check Results;
- Case Decision; and
- Signature.

Information about any adult members of the household may include:

- Full Name;
- Alias(es);
- Gender;
- Mailing address;
- Email address;
- Telephone number;
- Date of birth;
- County of birth;
- State or Province of birth;
- City, Town, or Village of Birth;
- A-Number;
- SSN;
- Passport number;
- Relationship to Prospective adoptive parent(s);
- Photographs;
- Physical Description (*e.g.,* height, weight, eye color, hair color, race, ethnicity, identifying marks like tattoos or birthmarks);
- Biometric (*i.e.,* fingerprints and photographs) and other information (*i.e.,* race, ethnicity, weight, height eye color, hair color) collected to conduct background checks;
- Criminal and National Security background check results;
- Accommodations/Disabilities;
- Signature; and
- Email Address.

Information about the adoptive beneficiary may include:

- Full Name at Birth;
- Full Name at Present;
- Alias;
- Date of birth;
- Gender;
- Country of birth
- City/Town/Village of Birth;
- Place of habitual residency;
- Present legal custodian;
- Present address;
- Address where the beneficiary will reside;
- Parental history and custody information (*e.g.,* birthmothers, fathers, or custodians of adopted children);
- Date of adoption;
- Country/Place of adoption;
- Physical or mental afflictions;
- Accommodations/disabilities;
- A-Number;
- Passport number;
- Relationship to prospective adoptive parent, if any;
- Article 16 Report, which is an official report from countries that are party to the Hague Adoption Convention, on a child's psychological, social, medical history, and reasons the child is in need of an adoptive placement;
- Supporting Documentation as Necessary (*e.g.,* birth certificate, appeals or motions to reopen or reconsider decisions, DNA results); and
- Case decision.

Information about birth mothers, fathers, or custodians of adopted children:

- Name;
- Date of birth;
- Relationship to adopted child(ren) (*e.g.,* living birth parent, surviving birth parent, sole birth parent); and
- Supporting documentation (identity information, death certificates, DNA test results, description of how the child beneficiary was abandoned or released for adoption, consent to adoption, adoption documentation, etc.).

Information about the adoption service providers and home study preparers may include:

- Name;
- Organization name;
- Mailing address;
- Phone and Fax numbers;
- Email address;
- Accreditation or Approval status; and
- Signature.

Information about the preparer may include:

- Full name;
- Organization or Business name;
- Business State ID number;
- Employer Tax Identification Number;
- Physical and Mailing addresses;
- Email address;
- Phone and fax numbers;
- Relationship to benefit requestor; and
- Signature.

Information about the representative may include:

- Name;
- Law firm/Recognized organization name;
- Physical and Mailing addresses;
- Phone and fax numbers;
- Email address;
- USCIS Online Account Number;
- Attorney Bar Card Number or equivalent;
- Bar Membership;
- Accreditation date;
- Source of Accreditation;
- Board of Immigration Appeals Representative Accreditation;
- Expiration date;
- Law Practice Restriction Explanation; and
- Signature.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The legal authorities for intercountry adoption from Hague Adoption Convention countries include the Hague Adoption Convention, the Intercountry Adoption Act of 2000, 8 U.S.C. 1101(b)(1)(G) (INA 101(b)(1)(G)), and 8 CFR 204.300–204.314. The legal authorities for intercountry adoption for non-Hague Adoption Convention countries include the Intercountry Adoption Universal Accreditation Act of 2012, Consolidated Appropriations Act of 2014 sec. 7083, 8 U.S.C. 1101(b)(1)(F) (INA 101(b)(1)(F)), and 8 CFR 204.3.

PURPOSE(S):

USCIS collects information on prospective adoptive parents and other associated individuals in order to assess the suitability and eligibility of the prospective adoptive parent(s) to adopt. USCIS also collects information

[2] *See* 8 CFR 204.311(m)

pertaining to the child to be adopted to determine whether he or she is eligible to immigrate as an immediate relative of a U.S. citizen under INA sec. 101(b)(1)(F) or (G). USCIS collects information on organizations that facilitate the adoption process, including law firms, home study preparers, accredited agencies, approved persons, exempted providers, supervised providers, and other adoption service providers so that USCIS can track and verify those entities that are authorized to participate in the adoption process. Finally, as a fraud monitoring tool, USCIS collects available biographic information relating to the birth parents and the custodians of the children being adopted.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Except as permitted by the Privacy Act, 5 U.S.C. 552a and applicable routine uses, USCIS may not disclose or give access to any information or record relating to any applicant, petitioner, spouse (if married), or adult member of the household to any individual or entity other than that person, including an accredited agency, approved person, exempted provider, supervised provider, or other adoption service provider, absent written consent, as provided by the Privacy Act, 5 U.S.C. 552a.

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 DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3). Even when a valid routine use permits disclosure of information from this system of records to a third party, in some cases such disclosure may not be permissible because of confidentiality laws and policies that limit the sharing of information regarding individuals applying for certain immigration benefits. These confidentiality provisions may be subject to certain exceptions which would allow for disclosure, such as in the case of a criminal or civil investigation.

A. To the Department of Justice (DOJ), including Offices of the U.S. Attorneys, or other federal agencies conducting litigation or in proceedings before any court, 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. DHS or any component thereof;

2. Any employee or former employee of DHS in his/her official capacity;

3. Any employee or former employee of DHS in his/her individual capacity when DOJ or DHS 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 (NARA) 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. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. DHS has determined that as a result of the suspected or confirmed compromise, there is a risk of identity theft or fraud, harm to economic or property interests, harm to an individual, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS 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 DHS'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, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, 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 DHS officers and employees.

G. To an appropriate federal, state, local, tribal, territorial, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation, enforcing, or implementing a law, rule, regulation, or order, when 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 clerks and judges of courts exercising naturalization jurisdiction to enable such courts to determine eligibility for naturalization and grounds for revocation of naturalization.

I. To DOS in the processing of visas, applications, or petitions for benefits under the INA, and all other immigration and nationality laws including treaties and reciprocal agreements.

J. To an attorney or representative (as defined in 8 CFR 1.2) who is acting on behalf of an individual covered by this system of records.

K. To appropriate federal, state, tribal, and local government law enforcement and regulatory agencies, foreign governments, and international organizations for example the Department of Defense, the DOS, the Department of the Treasury, the United Nations, and INTERPOL and individuals and organizations during the course of an investigation by DHS or the processing of a matter under DHS's jurisdiction, or during a proceeding within the purview of the immigration and nationality laws, when necessary to elicit information required by DHS to carry out its functions and statutory mandates.

L. To an appropriate federal, state, tribal, local, or foreign government agency or organization, or international organization, lawfully engaged in collecting law enforcement intelligence, whether civil or criminal, or charged with investigating, prosecuting, enforcing, or implementing civil or criminal laws, related rules, regulations or orders, to enable these entities to carry out their law enforcement responsibilities, including the collection of law enforcement intelligence, and the disclosure is appropriate to the proper performance of the official duties of the person making the disclosure.

M. To an appropriate federal, state, local, tribal, territorial, foreign, or international agency, if the information is relevant and necessary to a requesting agencies decision concerning the hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit, or if the information is relevant and necessary to a DHS decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of

a license, grant, or other benefit and when disclosure is appropriate to the proper performance of the official duties of the person making the request.

N. To a federal, state, or local government agency, or employer seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency or employer for any purpose authorized by law.

O. To the Social Security Administration (SSA) for the purpose of issuing a Social Security number and card to an alien who has made a request for a Social Security number as part of the immigration process and in accordance with any related agreements in effect between the SSA, DHS, and the DOS entered into pursuant to 20 CFR 422.103(b) (3); 422.103(c); and 422.106(a), or other relevant laws and regulations.

P. To federal and foreign government intelligence or counterterrorism agencies or components when DHS becomes aware of an indication of a threat or potential threat to national or international security, or when the information is needed to assist in anti-terrorism efforts and disclosure is appropriate to the proper performance of the official duties of the person making the disclosure.

Q. To officials of other federal, state, and local government agencies and adoption agencies and social workers to elicit information required for making a final determination of the prospective adoptive parent's ability to care for a beneficiary or the beneficiary's immigration eligibility.

R. To the Department of Health and Human Services to obtain information about children who are under its legal custody and/or protection.

S. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information, when disclosure is necessary to preserve confidence in the integrity of DHS, or when disclosure is necessary to demonstrate the accountability of DHS officers, employees, or individuals covered by the system, except to the extent the Chief Privacy Officer determines that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

DHS/USCIS stores records in this system electronically or on paper in secure facilities in a locked drawer or behind a locked door. The records may be stored on magnetic disc, tape, cloud services, and digital media.

RETRIEVABILITY:

Records may be retrieved by an individual's name, date of birth, address, A-Number, Receipt Number, SSN, or a combination thereof.

SAFEGUARDS:

DHS/USCIS safeguards records according to applicable rules and policies, including all applicable DHS automated systems security and access policies. DHS/USCIS has imposed strict controls 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:

DHS/USCIS stores the physical documents (paper forms) and supplemental documentation in the Alien File and processes applications and petitions in the respective DHS/USCIS case management system. Physical applications and supplemental documentation is stored in the Alien File. The A-File records are permanent whether hard copy or electronic. USCIS transfers the A-Files to the custody of NARA 100 years after the individual's date of birth.

Electronic benefits information is archived and disposed of in accordance with NARA-approved retention schedule for the respective USCIS case management systems (CAMINO and ACMS):

- Electronic data pertaining to intercountry applications and petitions filed internationally are electronically stored in CAMINO. NARA approved the CAMINO retention schedule [N1–566–12–06] on April 17, 2013. CAMINO retains records 25 years from the last completed action.
- Electronic data pertaining to intercountry applications and petitions filed domestically are stored in ACMS. USCIS is working with NARA to develop a retention and disposal schedule for data contained within ACMS. USCIS proposal for retention and disposal of these records is to store and retain adoption related records for 15 years, during which time the records will be archived. The 15 year retention period is derived from the length of time USCIS may interact with a customer.

SYSTEM MANAGER AND ADDRESS:

Assistant Center Director, Adoptions, National Benefits Center, Overland Park, KS 66213; and Director, Refugee, Asylum, and International Operations Directorate, 20 Massachusetts Avenue NW., Washington, DC 20529.

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 to the National Records Center (NRC) FOIA/PA Office, P.O. Box 648010, Lee's Summit, MO 64064–8010. The NRC can be found at *http://www.dhs.gov/foia* under ''Contacts.'' If an individual believes more than one component maintains Privacy Act (PA) records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act (FOIA) Officer, Department of Homeland Security, 245 Murray Drive SW., Building 410, STOP–0655, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records, your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address, and date and place of birth. You must sign your request, and your signature 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 obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, *http://www.dhs.gov/foia* or 1–866–431–0486. In addition, you should:

- Explain why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records.

If your request is seeking records pertaining to another living individual, you must include a statement from that

individual certifying his/her agreement for you to access his/her records.

Without the above information, the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Information contained in this system of records is primarily supplied by prospective adoptive parents and adult members of the household on forms associated with either the Hague Adoption Convention process or the orphan intercountry adoption process. These application and petition forms include:

- Form I–600, Petition to Classify Orphan as an Immediate Relative
- Form I–600A, Application for Advance Processing of Orphan Petition
- Form I–600A/Form I–600, Supplement 1 (Listing of Adult Member of the Household)
- Form I–800, Petition to Classify Convention Adoptee as an Immediate Relative
- Form I–800A, Application for Determination of Suitability to Adopt a Child from Convention Country
- Form I–800A Supplement 1 (Listing of Adult Member of the Household)
- Form I–800A Supplement 2 (Consent to Disclose Information)
- Form I–800A Supplement 3 (Request for Action on Approved Form I–800A)

Information contained in this system of records is also obtained through representatives of prospective adoptive parents and other organizations involved in an intercountry adoption case including information from the child's country of origin; the home study prepared by an authorized home study preparer submitted to USCIS in furtherance of the intercountry adoption immigration process; interviews performed by authorized USCIS and DOS personnel of individuals seeking to adopt; and data obtained from other DHS and non-DHS federal agency's systems and databases, including the Federal Bureau of Investigation, DOS, and U.S. Customs and Border Protection.

Specifically, Intercountry Adoptions Security stores and uses information from the following USCIS, DHS, and other federal agency systems of records:

- DHS/USCIS/ICE/CBP–001 Alien File, Index, and National File Tracking System of Records, 78 FR 69864 (November 21, 2013);
- DHS/USCIS–002 Background Check Service, 72 FR 31082 (June 5, 2007);
- DHS/USCIS–003 Biometric Storage System, 72 FR 17172 (April 6, 2007);
- DHS/USCIS–006 Fraud Detection and National Security Records (FDNS) 77 FR 47411 (August 8, 2012);
- DHS/USCIS–007 Benefit Information System, 81 FR 72069, (October 19, 2016)
- DHS/CBP–011 U.S. Customs and Border Protection TECS, 73 FR 77778 (December 19, 2008);
- DHS/CBP–021 Arrival and Departure Information System (ADIS), 80 FR 72081 (November 18, 2015);
- DHS/NPPD–004 DHS Automated Biometric Identification System (IDENT), 72 FR 31080 (June 5, 2007);
- JUSTICE/FBI–002 The FBI Central Records System, 72 FR 3410 (January 25, 2007);
- JUSTICE/FBI–009 Fingerprint Identification Records System (FIRS), 72 FR 3410 (January 25, 2007);
- STATE–05 Overseas Citizens Services Records, 73 FR 24343 (May 2, 2008);
- STATE–26 Passport Records, 76 FR 34966 (July 6, 2011); and
- STATE–39 Visa Records, 77 FR 65245 (October 25, 2012).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: October 27, 2016.

Jonathan R. Cantor,

Acting Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2016–26498 Filed 11–7–16; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2016–0076]

Privacy Act of 1974; Department of Homeland Security United States Citizenship and Immigration Services–004 Systematic Alien Verification for Entitlements Program System of Records

AGENCY: Department of Homeland Security, Privacy Office.

ACTION: Notice of Privacy Act System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security (DHS) proposes to update and reissue a current DHS system of records titled, ''DHS/United States Citizenship and Immigration Services (USCIS)–004 Systematic Alien Verification for Entitlements (SAVE) Program'' system of records. DHS/USCIS collects, uses, and maintains the SAVE Program records on noncitizen applicants for public benefits, licenses, grants, governmental credentials, or other statutorily authorized purposes.

DHS/USCIS is updating this system of records to: (1) Update the category of individuals to include sponsors listed on the Form I–864 *Affidavit of Support Under Section 213A of the Act;* (2) expand the categories of records to clarify the data elements that USCIS collects from benefit requestors, spouse, and children; the Dun & Bradstreet Data Universal Numbering System (DUNS) number of the benefit granting agency; and information collected from the benefit-issuing agency about users accessing the system to facilitate immigration status verification; (3) add new routine use (I) to account for disclosure to airport operators as authorized by the FAA Extension, Safety, and Security Act of 2016; (4) expand and add additional record source categories; and (5) explain that this system of records contains records from systems of records that may claim exemptions and DHS will comply with the record source system exemptions when relevant. Additionally, this notice includes non-substantive changes to simplify the formatting and text of the previously published notice.

This updated system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before December 8, 2016. This updated system will be effective December 8, 2016.

ADDRESSES: You may submit comments, identified by docket number DHS–2016–0076 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–343–4010.
- *Mail:* Jonathan R. Cantor, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, please visit *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions, please contact:

Donald K. Hawkins, (202) 272–8000, Privacy Officer, U.S. Citizenship and Immigration Services, 20 Massachusetts Avenue NW., Washington, DC 20529. For privacy questions, please contact: Jonathan R. Cantor, (202) 343–1717, Acting Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, DHS/USCIS proposes to update and reissue a current DHS system of records titled, ''DHS/U.S. Citizenship and Immigration Services (USCIS)–004, Systematic Alien Verification for Entitlement (SAVE) Program System of Records.''

The SAVE Program is a primarily web-based service designed to assist Federal, State, tribal, and local government agencies, benefit-issuing agencies, private entities, institutions, and licensing bureaus authorized by law in determining immigration status for granting benefits, licenses, and other lawful purposes. Benefits may include Social Security benefits, public health care, food stamps, conducting background investigations, armed forces recruitment, REAL ID compliance, or any other statutorily authorized purpose. The SAVE Program does not provide determinations regarding an applicant's eligibility for a specific benefit or license; only the benefit granting agency can make that determination. The SAVE Program does not receive the customer agency's final determination of benefit eligibility.

USCIS is updating this Privacy Act System of Records Notice for the SAVE Program to (1) update the category of individuals covered by this SORN, to include sponsors listed on the Form I–864, *Affidavit of Support Under Section 213A of the Act* and information collected from the benefit-issuing agency about users accessing the system to facilitate immigration status verification; (2) expand the category of records to include foreign passport expiration number; copies of original immigration documents submitted by the SAVE customer; photos; employment authorization document; grant date; and sponsor name, address, and Social Security number (SSN); the Dun & Bradstreet Data Universal Numbering System (DUNS) number of the benefit granting agency; information collected from the benefit-issuing agency about users accessing the system to facilitate immigration status verification (*e.g.,* agency name, address, point(s) of contact, contact telephone number, fax number, email address, user ID, type of benefit(s) the agency issues (*e.g.* Unemployment Insurance, Educational Assistance, Driver Licensing, Social Security Enumeration)); (3) add routine use (I) to account for non-governmental agencies authorized by law to access the SAVE Program pursuant to the FAA Extension, Safety, and Security Act of 2016; (4) update the record source categories from U.S. Customs and Border Protection (CBP) Nonimmigrant Information System and Border Crossing Information (NIIS and BCI) to CBP TECS and CBP Automatic Tracking System-Passenger (ATS–P) and add the USCIS Electronic Immigration System (ELIS) and the USCIS Person Centric Query Service (PCQS); (5) update to include exemptions because this system of records receives records from other systems that may be exempted under 5 U.S.C. 552a(j)(2). DHS will claim the same exemptions for those records that are claimed for the original primary systems of records from which they originated. Furthermore, this notice includes non-substantive changes to simplify the formatting and text of the previously published notice.

Consistent with DHS's information sharing mission, information stored in the DHS/USCIS–004 Systematic Alien Verification for Entitlement (SAVE) Program may be shared with other DHS components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, DHS/USCIS may share information with appropriate Federal, State, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this system of records notice.

This updated system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which Federal Government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals when systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors.

Below is the description of the DHS/USCIS–004 Systematic Alien Verification for Entitlements (SAVE) System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

System of Records

Department of Homeland Security (DHS)/U.S. Citizenship and Immigration Services (USCIS)–004

SYSTEM NAME:

DHS/USCIS–004 Systematic Alien Verification for Entitlements (SAVE) Program

SECURITY CLASSIFICATION:

Unclassified, For Official Use Only.

SYSTEM LOCATION:

Records are maintained at USCIS Headquarters in Washington, DC, DHS/USCIS domestic and international field offices, and at the DHS Stennis Data Center (DC1).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include both U.S. citizens and non-U.S. citizens covered by provisions of the Immigration and Nationality Act of the United States, including individuals who have been lawfully admitted to the United States, individuals who have been granted or derived U.S. citizenship, and individuals who have applied for other immigration benefits pursuant to 8 U.S.C. 1103 *et seq.,* as well as sponsors listed on the Form I–864, *Affidavit of Support Under Section 213A of the Act.*

CATEGORIES OF RECORDS IN THE SYSTEM:

Information collected from the benefit applicant by the agency issuing the benefit to facilitate immigration status verification may include the following about the benefit applicant:

- Full Name;
- Date of birth;
- Country of birth;
- A-Number;
- SSN (in very limited circumstances using the Form G–845, *Document Verification Request*);
- Receipt number;
- Admission number (I–94 number);
- Customer Agency Case number;
- Agency DUNS number;
- Visa number;
- DHS Document type;

- DHS Document Expiration date;
- Government-issued identification (*e.g.,* passport):
  - Document type;
  - Country of issuance (COI);
  - Document number;
  - Expiration date; and
  - Benefit requested (*e.g.,* unemployment insurance, educational assistance, driving licensing).
- Copies of original immigration documents; and
- U.S. Immigration and Custom Enforcement (ICE) Student and Exchange Visitor Identification System (SEVIS) ID.

System-generated responses as a result of the SAVE program verification process including:

- Case Verification; and
- SAVE program response.

Information collected from the benefit-issuing agency about users accessing the system to facilitate immigration status verification that may include the following about the agency:

- Agency name;
- Address;
- Names of Point(s) of Contact;
- Contact telephone number;
- Fax number;
- Email address;
- User ID; and
- Type of benefit(s) the agency issues (*e.g.,* Unemployment Insurance, Educational Assistance, Driver Licensing, and Social Security Enumeration).

Individual information that may be used by the SAVE program includes:

- Full Name;
- Date of birth;
- Country of birth;
- A-Number;
- SSN;
- Photograph;
- Government-issued identification (*e.g.,* passport):
  - Document type;
  - Country of issuance (COI);
  - Document number; and
  - Expiration date.
- Visa number;
- Form numbers (*e.g.,* Form I–551, *Lawful Permanent Resident Card,* Form I–766, *Employment Authorization Document*);
- Other unique identifying numbers (*e.g.,* Federal Bureau of Investigation Number (FIN), SEVIS Identification Number (SEVIS ID), Admission number (I–94 number);
- Entry/Departure date;
- Port of entry;
- Alien Status Change date;
- Naturalization date;
- Date admitted until, country of citizenship;
- Document Grant date;
- Document Receipt number;
- Codes (*e.g.,* class of admission, file control office, provision of law cited for employment authorization);
- Beneficiary information (*e.g.,* Full Name, A-Number, Date of birth, Country of birth, SSN);
- Petitioner information (*e.g.,* Full Name, A-Number, SSN, Tax number, Naturalization Certificate number);
- Sponsor information (*e.g.,* Full Name, Address, SSN);
- Spouse information (*e.g.,* Full Name, A-Number, Date of birth, Country of birth, Country of citizenship, Class of admission, Date of admission, Receipt number, Phone number, Marriage date and location, Naturalization date and location);
- Children information (*e.g.,* Full Name, A-Number, Date of birth, Country of birth, Class of admission); and
- Employer information (*e.g.,* Full Name, Address, Supervisor's name, Supervisor's Phone number).

Case history information may include:

- Alert(s);
- Case summary comments;
- Case category;
- Date of encounter;
- Encounter information;
- Custody actions and decisions;
- Case actions and decisions;
- Bonds;
- Photograph;
- Asylum applicant receipt date;
- Airline and flight number;
- Country of residence;
- City (*e.g.,* where boarded, where visa was issued);
- Date visa issued;
- Address in United States;
- Nationality;
- Decision memoranda; Investigatory reports and materials compiled for the purpose of enforcing immigration laws;
- Exhibits;
- Transcripts; and
- Other case-related papers concerning aliens, alleged aliens, or lawful permanent residents brought into the administrative adjudication process.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for having a system for verification of immigration status is found in Immigration Reform and Control Act (IRCA), Public Law 99–603, 100 Stat. 3359 (1986); Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), Public Law 104–193, 110 Stat. 2105 (1996); Title IV, Subtitle A, of Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Public Law 104–208, 110 Stat. 3009 (1997); the REAL ID Act of 2005, Public Law 109–13, 119 Stat. 231 (2005); Patient Protection and Affordable Care Act, Public Law 111–148, 124 Stat. 119 (Mar. 23, 2010), as amended by the Health Care and Education Reconciliation Act of 2010, Public Law 111–152, 124 Stat. 1029 (Mar. 30, 2010); and the FAA Extension, Safety and Security Act of 2016, Public Law 114–190, 130 Stat. 615 (July 15, 2016).

PURPOSE(S):

The purpose of this system is to provide a fee-based service that assists federal, state, tribal, or local government agencies, or contractors acting on the agency's behalf, private entities and agencies and licensing bureaus for any legally mandated purpose in accordance with an authorizing statute to confirm immigration and naturalized and derived citizen status information, to the extent that such disclosure is necessary to enable these agencies and entities to make decisions related to (1) determining eligibility for a federal, state, or local public benefit; (2) issuing a license or grant; (3) issuing a government credential; (4) conducting a background investigation; or (5) any other lawful purpose.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, 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 this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the U.S. Department of Justice (DOJ), including Offices of the United States Attorneys, or other federal agency conducting litigation or in proceedings before any court, 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. DHS or any component thereof;
2. Any employee or former employee of DHS in his/her official capacity;
3. Any employee or former employee of DHS in his/her individual capacity when DOJ or DHS 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 (NARA) 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. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. DHS has determined that as a result of the suspected or confirmed compromise, there is a risk of identity theft or fraud, harm to economic or property interests, harm to an individual, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS 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 DHS'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, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, 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 DHS officers and employees.

G. To an appropriate federal, state, local, tribal, territorial, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation, enforcing, or implementing a law, rule, regulation, or order, when 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 approved federal, state, and local government agencies for any legally mandated purpose in accordance with their authorizing statute or law and when an approved Memorandum of Agreement or Computer Matching Agreement (CMA) is in place between DHS and the entity.

I. To airport operators to determine the eligibility of individuals seeking unescorted access to any Security Identification Display Area of an airport, as required by the FAA Extension, Safety, and Security Act of 2016.

J. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information, when disclosure is necessary to preserve confidence in the integrity of DHS, or when disclosure is necessary to demonstrate the accountability of DHS officers, employees, or individuals covered by the system, except to the extent the Chief Privacy Officer determines that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

USCIS stores records in this system electronically or on paper in secure facilities in a locked drawer behind a locked door. The records may be stored on magnetic disc, tape, and digital media.

RETRIEVABILITY:

USCIS retrieves records by name of applicant or other unique identifier to include (but not limited to): Verification Number, A-Number, I–94 Number, SSN, Passport number and Country of Issuance (COI), Visa number, SEVIS Identification, or by the submitting agency name.

SAFEGUARDS:

USCIS safeguards records in this system according to applicable rules and policies, including all applicable DHS automated systems security and access policies. USCIS has imposed strict controls 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:

The retention and disposal schedule, N1–566–08–7, has been approved by the National Archives and Records Administration. Records collected in the process of enrolling in SAVE and in verifying citizenship or immigration status are stored and retained in SAVE for ten (10) years from the date of the completion of verification, unless the records are part of an ongoing investigation in which case they will be retained until completion of the investigation. This period is based on the statute of limitations for most types of misuse or fraud possible using SAVE (under 18 U.S.C. 3291, the statute of limitations for false statements or misuse regarding passports, citizenship, or naturalization documents).

SYSTEM MANAGER AND ADDRESS:

The DHS system manager is the Chief, Verification Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 131 M Street NE., Suite 200, Mail Stop 200, Washington, DC 20529.

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 to the National Records Center, Freedom of Information Act (FOIA)/Privacy Act (PA) Office, P.O. Box 648010, Lee's Summit, MO 64064–8010. Specific FOIA information can be found at *http://www.dhs.gov/foia* under ''Contacts.'' If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, 245 Murray Drive, SW., Building 410, STOP–0655, Washington, DC 20528. When seeking records about yourself from this system of records or any other Departmental system of records, your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address, and date and place of birth. You must sign your request, and your signature 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 obtain forms for this purpose from the Chief Privacy Officer and Chief FOIA Officer, *http://www.dhs.gov/foia* or 1–866–431–0486. In addition, you should:

- Explain why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created; and

• Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records;

• If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without the above information, the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Records are obtained from several sources to include:

(A) Agencies and entities seeking to determine immigration or naturalized or derived citizenship status;

(B) Individuals seeking public licenses, benefits, or credentials;

(C) Other DHS components assisting with enrollment and system maintenance processes;

(D) Information collected from the federal databases listed below:

• Arrival/Departure Information System (ADIS);

• Central Index System (CIS);

• Computer-Linked Application Information Management System 3 & 4 (CLAIMS 3 & CLAIMS 4);

• Customer Profile Management System (CPMS);

• Customs and Border Protection's (CBP) TECS;

• CBP Automatic Tracking System-Passenger (ATS–P);

• Electronic Immigration System (ELIS);

• Enforcement Integrated Database (EID);

• Enforcement Alien Removal Module (EARM);

• Enterprise Service Bus Person Centric Query Service (ESB PCQS);

• Enterprise Citizenship and Immigration Services Centralized Operational Repository (eCISCOR);

• Enterprise Document Management System (EDMS);

• Marriage Fraud Amendment System (MFAS);

• Microfilm Digitization Application System (MiDAS);

• National File Tracking System (NFTS);

• Refugees, Asylum, and Parole System (RAPS);

• DOJ's Immigration Review Information Exchange System (IRIES);

• Student and Exchange Visitor Identification System (SEVIS);

• Immigration status (*e.g.,* Lawful Permanent Resident) from the Department of Justice Executive Office of Immigration Review (EOIR) System; and

• Department of State the Consular Consolidated Database (DOS–CCD).

(E) Information created by the Systematic Alien Verification for Entitlements (SAVE) program.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system may receive records from another system exempted in that source system under 5 U.S.C. 552a(j)(2). DHS will claim the same exemptions for those records that are claimed for the systems of records from which they originated.

Dated: October 27, 2016.

Jonathan R. Cantor,

Acting Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2016–26499 Filed 11–7–16; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Approval From OMB of One New Public Collection of Information: Certification of Identity Form (TSA Form 415)

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-Day notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on a new Information Collection Request (ICR) abstracted below that we will submit to the Office of Management and Budget (OMB) for approval in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves an individual traveler providing his or her name and address and information about verifying identity documents that have been issued to the traveler but are not present with him or her at an airport security screening checkpoint.

DATES: Send your comments by January 9, 2017.

ADDRESSES: Comments may be emailed to *TSAPRA@tsa.dhs.gov* or delivered to the TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh at the above address, or by telephone (571) 227–2062.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Purpose and Description of Data Collection

TSA requires individuals to provide an acceptable verifying identity document in order to proceed through security screening, enter the sterile area of the airport, or board a commercial aircraft. Under 49 CFR 1560.3, acceptable verifying identity documents include federally-issued documents, such as U.S. passports and U.S. passport cards, passports issued by foreign governments, and state-issued driver's licenses and identification cards. The complete list of acceptable verifying identity documents is available at *www.tsa.gov/sites/default/files/resources/realid_factsheet_071516–508.pdf.*

Secure driver's licenses and identification documents are a vital component of the Department of Homeland Security's (DHS's) national security strategy. In particular, preventing terrorists from obtaining state-issued identification documents is critical to securing the United States against terrorism. The 9/11 Commission noted ''[f]or terrorists, travel documents are as important as weapons'' and recommended that the Federal

Government work with other levels of government to solidify the security of government-issued identification documents.[1]

The REAL ID Act of 2005 (REAL ID Act)[2] was enacted to further the goal of securing state-issued identification documents to address terrorism, identity fraud, and illegal immigration. Section 202 of the REAL ID Act prohibits Federal agencies from accepting state-issued[3] driver's licenses or identification cards for specified official purposes, unless such documents are determined by the Secretary of Homeland Security to meet minimum security requirements, including the incorporation of specified data, a common machine-readable technology, and certain anti-fraud security features. The ''official purposes'' defined in the REAL ID Act include ''boarding federally regulated commercial aircraft.''

To implement the REAL ID Act, TSA may accept state-issued verifying identity documents only if they have been issued by a state that is in compliance with the minimum security requirements and standards set forth in the Act, or if the state has received an extension from DHS. In accordance with DHS policy, TSA will begin implementing the REAL ID Act at airport security screening checkpoints on January 22, 2018. Starting on that day, TSA will not accept state-issued driver's licenses and other state-issued identification cards from states that are not compliant with REAL ID Act requirements unless DHS has granted the state a temporary extension to achieve compliance.

Concurrently with implementation of the REAL ID Act, TSA is updating the identity verification process for travelers who arrive at an airport security checkpoint without an acceptable verifying identity document. This process involves a traveler providing his or her name and address and answering questions to confirm his or her identity. If the traveler's identity is confirmed, he or she will be allowed to enter the screening checkpoint. Travelers using this process for identity verification may be subject to additional security screening. A traveler will not be permitted to fly if his or her identity cannot be confirmed. A traveler also will not be permitted to fly if he or she declines to cooperate with the identity verification process.

To initiate the identity verification process, a traveler without an acceptable verifying identity document must complete a Certification of Identity (COI) form (TSA Form 415). The current TSA Form 415 requests the traveler's name and address. After completing the form, the traveler is connected with TSA's Identity Verification Call Center (IVCC). The IVCC searches various commercial and government databases using the name and address on the TSA Form 415 as key search criteria to find other identifying information about the traveler. The IVCC then asks the traveler a series of questions based on information found in the databases to verify the individual's identity.

To ensure that the identity verification process described above does not become a means for travelers to circumvent implementation of the REAL ID Act, TSA is updating the process so that it is generally only available to travelers who certify that they—

- Reside in or have been issued a driver's license or state identification card by a state that is compliant with the REAL ID Act or a state that has been granted an extension by DHS; or
- Have been issued another verifying identity document that TSA accepts.

To enable travelers to make this certification, TSA is revising Form 415. The revised TSA Form 415 requests a traveler's name and address and asks for the following additional information:

(1) Whether the traveler has been issued a driver's license or state identification card.

(2) If yes, the state that issued the document.

(3) Whether the traveler has been issued an acceptable verifying identity document other than a state-issued driver's license or identification card.

Use of Results

TSA will use the information provided on revised TSA Form 415 to generate questions intended to verify the identity of a traveler who arrives at a security-screening checkpoint without an acceptable verifying identity document. A failure to collect this information would result in TSA being unable to verify the identity of travelers without an acceptable verifying identity document and these travelers being unable to proceed through the security checkpoint and board a commercial aircraft.

The most likely respondents to this proposed information request are travelers who arrive at an airport security checkpoint without an acceptable verifying identity document because they lost or forgot their driver's license or other state-issued identification card. Other likely respondents are travelers who had their verifying identity document stolen and travelers carrying a form of identification that they incorrectly believed to be acceptable. TSA estimates that approximately 191,214 passengers will complete the TSA Form 415 annually. TSA estimates each form will take approximately three minutes to complete. This collection would result in an annual reporting burden of 9,561 hours.

Dated: November 3, 2016.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2016–26958 Filed 11–7–16; 8:45 am]

BILLING CODE 9110–05–P

[1] Thomas H. Kean, Lee H. Hamilton, and the National Commission on Terrorist Attacks, ''The 9/11 Commission report: Final Report of the National Commission on Terrorist Attacks Upon the United States (9/11 Report)'' (Washington, DC, U.S. Government Printing Office, Official Government Edition, July 22, 2004), p. 384. Available at *https://www.gpo.gov/fdsys/pkg/GPO–911REPORT/content-detail.html.*

[2] ''Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005,'' Public Law 109–13, Div. B—REAL ID Act of 2005, 119 Stat. 231, 302–23 (May 11, 2005).

[3] The REAL ID Act defines the term ''State'' to mean ''a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.''

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2017–N180; FXES11140100000–178–FF01E00000]

Draft Safe Harbor Agreement and Receipt of Application for an Enhancement of Survival Permit for the Kamehameha Schools; Keauhou and Kilauea Forest Lands, Hawaii Island, Hawaii

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application from Kamehameha Schools (KS), a private charitable education trust, for an enhancement of survival permit (permit) under the Endangered Species Act of 1973, as amended (ESA). The permit application includes a draft Safe Harbor Agreement (SHA) between KS, the Service, and the Hawaii Department of Land and Natural Resources (DLNR). Kamehameha Schools is proposing to conduct proactive conservation activities to promote the survival and recovery of 32 federally endangered species and one species currently proposed for listing (''covered species'') across the Keauhou

and Kilauea Forest Lands, which comprise 32,280 acres on the southeastern slope of Mauna Loa, Hawaii Island. We invite comments from all interested parties on the permit application, including the draft SHA and a draft environmental action statement (EAS) prepared pursuant to the requirements of the National Environmental Policy Act (NEPA).

DATES: To ensure consideration, please send your written comments by December 8, 2016.

ADDRESSES: To request further information or submit written comments, please use one of the following methods, and note that your information request or comments are in reference to the Kamehameha Schools—Keauhou and Kilauea Forest Lands SHA, draft EAS, and the proposed issuance of the Permit:

- *Internet:* Documents may be viewed on the internet at *http://www.fws.gov/pacificislands/.*
- *Email: KamehamehaSchoolsSHA@fws.gov.* Include ''Kamehameha Schools SHA and draft EAS'' in the subject line of the message.
- *U.S. Mail:* Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3–122, Honolulu, HI 96850.
- *Fax:* 808–792–9581, Attn: Field Supervisor. Include ''Kamehameha Schools SHA and draft EAS'' in the subject line of the message.
- *In-Person Drop-off, Viewing, or Pickup:* Comments and materials received will be available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3–122, Honolulu, Hawaii 96850. Written comments can be dropped off during regular business hours at the above address on or before the closing date of the public comment period (see **DATES**).

FOR FURTHER INFORMATION CONTACT: Ms. Michelle Bogardus (Maui Nui and Hawaii Island Team Manager) or Ms. Donna Ball (Hawaii Island Fish and Wildlife Biologist), U.S. Fish and Wildlife Service (see **ADDRESSES**), by telephone at 808–792–9400. If you use a telecommunications device for the deaf, please call the Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Under a SHA, participating landowners undertake management activities on their property to enhance, restore, or maintain habitat conditions for species listed under the ESA (16 U.S.C. 1531 *et seq.*) to an extent that is likely to result in a net conservation benefit for the covered listed species. A SHA, and the associated permit issued to participating landowners pursuant to section 10(a)(1)(A) of the ESA, encourage private and other non-Federal property owners to implement conservation actions for federally listed species by assuring the participating landowners that they will not be subjected to increased property use restrictions as a result of their efforts to either attract listed species to their property, or to increase the numbers or distribution of listed species already on their property.

The SHA and its associated permit allow the property owner to alter or modify the enrolled property back to agreed-upon pre-permit baseline conditions at the end of the term of the permit, even if such alteration or modification results in the incidental take of a listed species. The baseline conditions must reflect the known biological and habitat characteristics that support existing levels of use of the enrolled property by species covered in the SHA. The authorization to take listed species is contingent on the property owner complying with obligations in the SHA and the terms and conditions of the permit. The SHA's net conservation benefits must be sufficient to contribute, either directly or indirectly, to the recovery of the covered listed species. Enrolled landowners may make lawful use of the enrolled property during the term of the permit and may incidentally take the listed species named on the permit in accordance with the terms and conditions of the permit.

Permit application requirements and issuance criteria for enhancement of survival permits for SHAs are found in the Code of Federal Regulations (CFR) at 50 CFR 17.22(c). The Service's Safe Harbor Policy (64 FR 32717, June 17, 1999) and the Safe Harbor Regulations (68 FR 53320, September 10, 2003; and 69 FR 24084, May 3, 2004) are available at *http://www.fws.gov/endangered/laws-policies/regulations-and-policies.html.*

Kamehameha Schools—Keauhou and Kilauea Forest Lands Safe Harbor Agreement

The Service has received a permit application from KS to authorize incidental take of the covered species with implementation of the SHA. The permit application includes a draft SHA between KS, the Service, and Hawaii DLNR. The conservation objective of the SHA is to promote recovery of the following Federal- and State-endangered birds: the Hawaii Creeper (*Loxops mana*); Hawaii Akepa (*Loxops coccineus*); Akiapolaau (*Hemignathus wilsoni*); Io (Hawaiian Hawk; *Buteo solitarius*); Nene (Hawaiian Goose; *Branta sandvicensis*); Alala (Hawaiian Crow; *Corvus hawaiiensis*); Hawaiian Hoary Bat (Opeapea; *Lasiurus cinereus semotus*); and 25 endangered plant species (collectively referred to as the ''covered species'') through habitat restoration and management practices (Table 1), as well as the Iiwi (*Vestiaria coccinea*), a species proposed for listing as threatened. The activities implemented under this SHA will aid in increasing the current range of the covered species, restoring these species to part of their historic ranges, increasing the total population of these species, and reestablishing wild populations of these species, thus contributing to their overall recovery. Implementation of the SHA is also likely to reduce habitat fragmentation by connecting a network of protected and managed State, Federal, and private lands within the south central region of Hawaii Island and is also likely to benefit other native species.

Of the covered species, all but one of the wildlife species currently occur on the property. The Alala is currently extirpated in the wild, but survives through an intensive captive breeding program and partnership between the San Diego Zoo, the Service, and Hawaii DLNR. The Alala will be reintroduced to the wild in November 2016 on State-owned lands adjacent to Keauhou and Kilauea Forest. It is likely that released Alala will disburse beyond the release site and enter the enrolled property under the SHA. Of the covered plant species, eight currently occur on the enrolled property. The remaining covered plant species are known to have historically occurred in the region, and may become re-established on the enrolled property through habitat enhancement and restoration activities described in the SHA, or may be outplanted on the enrolled property over the term of the SHA and permit.

TABLE 1—WILDLIFE SPECIES COVERED UNDER THE KAMEHAMEHA SCHOOLS—KEAUHOU AND KILAUEA FOREST LANDS SAFE HARBOR AGREEMENT

Species	Status Federal/State	State population estimate	Current distribution by island
Akiapolaau, (*Hemignathus wilsoni*)	Endangered	1,900	Hawaii.
Hawaii Creeper, (*Loxops mana*)	Endangered	14,000	Hawaii.
Hawaii Akepa (*Loxops coccineus*)	Endangered	12,000	Hawaii.
Iiwi (*Vestiaria coccinea*)	Petitioned for Listing	>300,000	Hawaii, Maui, Kauai, Molokai, Oahu.
Io, Hawaiian Hawk (*Buteo solitarius*)	Endangered	1,200	Hawaii.
Alala, Hawaiian Crow (*Corvus hawaiiensis*)	Endangered	135 individuals in captivity.	Extinct in the wild.
Nene, Hawaiian Goose (*Branta sandvicensis*)	Endangered	2500	Hawaii, Maui, Kauai, Molokai, Oahu.
Opeapea, Hawaiian Hoary Bat (*Lasiurus cinereus semotus*).	Endangered	Widely distributed but population unknown.	Hawaii, Maui, Kauai, Molokai, Oahu.

TABLE 2—PLANT SPECIES COVERED UNDER THE KAMEHAMEHA SCHOOLS—KEAUHOU AND KILAUEA FOREST LANDS SAFE HARBOR AGREEMENT

Species	Status Federal/State	Current distribution by island	Current presence on the enrolled property
Asplenium peruvianum var. *insulare*	Endangered	Hawaii, Maui	Present.
Clermontia lindseyana, Oha wai	Endangered	Hawaii, Maui	Present.
Cyanea shipmanii, Haha	Endangered	Hawaii	Present.
Cyanea stictophylla, Haha	Endangered	Hawaii	Present.
Phyllostegia racemosa, Kiponapona	Endangered	Hawaii	Present.
Phyllostegia velutina	Endangered	Hawaii	Present.
Plantago hawaiensis	Endangered	Hawaii	Present.
Vicia menziesii	Endangered	Hawaii	Present.
Argyroxiphium kauens, Ahinahina	Endangered	Hawaii	Not Present.
Clermontia peleana, Oha	Endangered	Hawaii, Maui	Not Present.
Cyanea tritomantha, Aku	Endangered	Hawaii	Not Present.
Cyrtandra giffardii, Haiwale	Endangered	Hawaii	Not Present.
Cyrtandra tintinnabula, Haiwale	Endangered	Hawaii	Not Present.
Hibiscadelphus giffardianus, Hau kuahiwi	Endangered	Hawaii	Not Present.
Joinvillea ascendens, Ohe	Endangered	Hawaii, Maui, Kauai, Molokai, Oahu	Not Present.
Melicope zahlbruckneri, Alani	Endangered	Hawaii	Not Present.
Neraudia ovata	Endangered	Hawaii	Not Present.
Nothocestrum breviflorum, Aiea	Endangered	Hawaii	Not Present.
Phyllostegia floribunda	Endangered	Hawaii	Not Present.
Phyllostegia parviflora	Endangered	Hawaii, Maui, Oahu	Not Present.
Ranunculus hawaiiensis, Makou	Endangered	Hawaii, Maui	Not Present.
Sicyos alba, Anunu	Endangered	Hawaii	Not Present.
Sicyos macrophyllus, Anunu	Endangered	Hawaii	Not Present.
Silene hawaiiensis	Endangered	Hawaii	Not Present.
Stenogyne angustifolia	Endangered	Hawaii, Maui, Molokai	Not Present.

The land area covered by the SHA and permit (''enrolled property'') encompasses 32,280 acres on the southeastern slope of Mauna Loa on the island of Hawaii. The enrolled property is bounded by Federal lands to the west and south (Hawaii Volcanoes National Park), State lands to the east (Puu Makaala Natural Area Reserve) and north (Mauna Loa Forest Reserve), and State-leased lands to the north (Kipuka Ainahou Nene Sanctuary). Kamehameha Schools' management and stewardship practices have contributed to preserving some of the last remaining intact native forests in Hawaii. Keauhou Forest and Kilauea Forest support native habitat for numerous endangered species. A portion of the enrolled property, Kilauea Forest, has been largely unaltered and has long been recognized for its native bird populations. The area within the Keauhou boundary was formerly altered by ranching and logging operations. Currently no cattle ranching operations exist, and both Keauhou and Kilauea are managed to preserve and restore the native forests via ungulate removal, reforestation, and out-plantings of native and rare species. In addition to native forest restoration activities, portions of Keauhou (but not Kilauea) will include forest management practices for the purposes of sustainably harvesting native hardwoods. These efforts implemented by KS are expected to result in a further increase in biodiversity in the region. In addition, KS continues to provide educational opportunities to promote the conservation of healthy native ecosystems.

Covered activities associated with the SHA include: (1) Removal of invasive predators; (2) habitat restoration and native plant community outplantings; (3) koa silviculture; (4) ungulate fence installation/maintenance and ungulate control; (5) invasive weed control; (6) fire threat management; (7) response efforts for Rapid Ohia Death; and (8) other activities on the enrolled property that are not likely to result in take of the covered species due to the incorporation of take avoidance and minimization measures. All of the covered activities are associated with enhancement of the native forest, and will result in a net benefit to each of the covered species. If issued, the permit would authorize incidental take of the covered species that may occur as a result of the covered activities. Incidental take associated

with the implementation of the SHA is anticipated to be very low due to the incorporation of significant take avoidance and minimization measures for each covered activity. Both the SHA and the permit are proposed for a term of 50 years.

Kamehameha Schools is simultaneously applying to the Hawaii DLNR for an Incidental Take License (ITL) under the Hawaii Endangered Species Law (Hawaii Revised Statutes § 195D). The draft SHA serves as the basis for permit and ITL decisions by the Service and the Hawaii DLNR, respectively. Kamehameha Schools worked closely with the Service and DLNR to develop the SHA.

The Service's Proposed Action

The Service proposes to enter into the SHA and to issue a permit to KS authorizing incidental take of the covered species caused by covered activities, if permit issuance criteria are met. Both the SHA and the permit would have a term of 50 years.

Due to the difficulty in monitoring individuals of some of the covered species, occupied habitat has been used to establish baseline conditions for the Hawaiian forest birds, the Hawaiian hawk, and Hawaiian hoary bat. The baseline for the Hawaiian forest birds, including the Akiapolaau, Hawaii Creeper, Hawaii Akepa, and Iiwi, is represented by the extent of their current occupied habitat, determined to be forest habitat with a tree cover of closed canopy, open canopy, scattered trees and very scattered trees for a total of 4,162 acres. The baseline for the Hawaiian Hawk and Hawaiian hoary bat is defined as 18,517 acres of open or closed canopy tree cover across the enrolled property, of which a majority is native dominated koa and ohia trees.

The baseline determination for the Nene is based on weekly surveys conducted by Hawaii DLNR on the enrolled property and surrounding lands. While Nene occasionally transit the property, there are no breeding Nene on the enrolled property; therefore the baseline is set at zero individuals. Alala are currently extirpated from the wild so none occur on the enrolled property. Therefore, the baseline for the Alala under the SHA is set at zero individuals.

Baseline conditions for each of the listed plant species are based on comprehensive surveys that occurred on the enrolled property in 2007 (Table 3). Eight listed plant species are currently known to exist on the enrolled property.

Seventeen of the plant covered species are not currently known to be present on the enrolled property. These plants were determined to either have the potential to spread naturally onto the enrolled property or be reintroduced by KS in the future. The baseline for these plants is zero.

TABLE 3—SUMMARY OF BASELINES (EXPRESSED IN TERMS OF INDIVIDUAL PLANTS) FOR COVERED PLANT SPECIES UNDER THE SHA

Species	SHA baseline
Asplenium peruvianum var. *insulare*	128
Clermontia lindseyana, Oha wai	24
Cyanea shipmanii, Haha	463
Cyanea stictophylla, Haha	104
Phyllostegia racemosa, Kiponapona	4
Phyllostegia velutina	38
Plantago hawaiensis	1
Vicia menziesii	27
Argyroxiphium kauens, Ahinahina	0
Clermontia peleana, Oha	0
Cyanea tritomantha, Aku	0
Cyrtandra giffardii, Haiwale	0
Cyrtandra tintinnabula, Haiwale	0
Hibiscadelphus giffardianus, Hau kuahiwi	0
Joinvillea ascendens, Ohe	0
Melicope zahlbruckneri, Alani	0
Neraudia ovata	0
Nothocestrum breviflorum, Aiea	0
Phyllostegia floribunda	0
Phyllostegia parviflora	0
Ranunculus hawaiiensis, Makou	0
Sicyos alba, Anunu	0
Sicyos macrophyllus, Anunu	0
Silene hawaiiensis	0
Stenogyne angustifolia	0

Under the SHA, the conservation benefits for the covered species are expected to be realized through implementation of all of the covered activities including: (1) Removal of invasive predators; (2) habitat restoration and native plant community outplantings; (3) koa silviculture; (4) ungulate fence installation/maintenance and ungulate control; (5) invasive weed control; (6) fire threat management; (7) response efforts for Rapid Ohia Death; and (8) other activities. Additionally, KS will execute a right of access for Alala monitoring and predator control. The SHA will also connect a variety of high-quality National Park and State-owned protected lands, which will promote an increase of forest connectivity, covered species populations and their distributions.

Kamehameha Schools will be required to monitor the covered species and baseline conditions according to schedule outlined in the SHA. Some covered species surveys have been conducted by partners of KS in the past; these partners may continue to assist KS in meeting their monitoring obligations under the SHA and permit.

Incidental take of the forest birds (the Akiapolaau, Hawaii Creeper, Hawaii Akepa, and the Iiwi) may occur in the form of harm or harassment from noise, visual disturbance, or removal of trees in a portion of the property from koa silviculture activities and weed control. Weed control is likely to result in low levels of take of the Hawaiian hawk and the nene in the form of harassment. Habitat restoration, installation of new fences, and weed control activities may result in the loss or destruction of individuals of covered plant species (outplants, propagules), with the exception of three special-concern species (*Vicia menziesii, Phyllostegia racemosa,* and *Cyanea stictophylla*), for which additional measures have been incorporated into the SHA to fully avoid any adverse effects from these activities. Additionally, due to the ephemeral nature of some of the plant species life histories, individual plants may be missed during surveys, resulting in their loss or degradation caused by covered activities. The impact of this loss is anticipated to be minor or negligible to the survival and recovery of the covered species. No incidental take of the Hawaiian hoary bat, Alala, or the three special-concern plant species are anticipated to occur as a result of the covered activities.

Net Conservation Benefit

The Service anticipates that the SHA will result in the following benefits to the covered species: (1) Establishment of new populations and/or habitat where they do not currently exist; (2) an increase in the current range of wild populations; (3) opportunities to increase genetic diversity of the species; (4) a reduction of forest fragmentation and an increase in habitat connectivity through habitat restoration, enhancement, and creation efforts; (5) an increase in habitat connectivity by creating a habitat ''bridge'' between large protected areas; and (6) protection and maintenance of current levels of occupied nesting and foraging habitats. For these reasons, the cumulative impact of this SHA and the activities it covers, which would be facilitated by the allowable incidental take, is likely to provide a net conservation benefit to the covered species.

For the reasons discussed above, the conservation measures implemented under this SHA are likely to enhance, create, and conserve habitat for the long-term recovery of the covered species. Through this SHA, KS will provide a large expanse of suitable habitat that is fenced and free from ungulates for the

benefit of multiple animal and plant species to increase their range and populations. The 50-year duration of the SHA and permit is considered to be sufficient to establish and maintain these goals.

The management activities to be implemented pursuant to the SHA directly support recovery actions and conservation objectives outlined in conservation and recovery plans for the covered species (USFWS 1984a, USFWS 1984b, USFWS 1996, USFWS 1998a, USFWS 1998b, USFWS 1998c, USFWS 2004, USFWS 2006, USFWS 2009, Hawaii DLNR 2015, and Fraiola and Rubenstein 2007) including: Protection, management, restoration, and conservation of suitable and known occupied habitat; ungulate control; alien species control; and re-establishment of connectivity of currently fragmented habitats.

National Environmental Policy Act Compliance

A decision by the Service to enter into the proposed SHA and to issue the proposed permit are Federal actions that trigger the need for compliance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) (NEPA). We have made a preliminary determination that the proposed SHA and permit actions are eligible for categorical exclusion under NEPA. The basis for our preliminary determination is contained in the EAS, which is available for public review (see **ADDRESSES**).

Public Comments

You may submit your comments and materials by one of the methods listed in the **ADDRESSES** section. We request data, new information, or comments from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party via this notice on our proposed Federal action. In particular, we request information and comments regarding:

(1) Whether the implementation of the proposed SHA would provide a net conservation benefit to the covered species;

(2) Other conservation measures that would lead to a net-conservation benefit for the covered species;

(3) The length of the proposed term of the permit;

(4) The direct, indirect, and cumulative effects that implementation of the SHA could have on the human environment;

(5) Other plans, projects, or information that might be relevant to evaluating the effects of this proposed action; and

(6) Information regarding the adequacy of the proposed SHA pursuant to the requirement for permits at 50 CFR parts 13 and 17.

Public Availability of Comments

All comments and materials we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personally identifiable information in your comments, you should be aware that your entire comment—including your personally identifiable information—may be made publicly available at any time. While you can ask us in your comment to withhold your personally identifiable information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety. Comments and materials we receive, as well as supporting documentation we use in preparing the EAS, will be available for public inspection by appointment, during normal business hours, at our Pacific Islands Field Office (see **ADDRESSES**).

Next Steps

We will evaluate the permit application, associated documents, and public comments in reaching a final decision on whether the permit application and the EAS meet the requirements of section 10(a) of the ESA (16 U.S.C. 1531 *et seq.*) and NEPA, respectively. The SHA and EAS may change in response to public comments. We will also evaluate whether the proposed permit action complies with section 7 of the ESA by conducting an intra-Service section 7 consultation on the proposed action. We will use the results of this consultation, in combination with our findings on whether the application meets issuance criteria, in our final analysis to determine whether or not to issue the proposed permit. If we determine that all requirements are met, we will sign the proposed SHA and issue the permit under the authority of section 10(a)(1)(A) of the ESA to KS for incidental take of the covered species caused by covered activities that are implemented in accordance with the terms of the permit and the SHA. We will not make our final decision until after the end of the 30-day public comment period, and we will fully consider all comments and information we receive during the public comment period.

Authority

We provide this notice pursuant to: Section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22); and NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Theresa Rabot,

Deputy Regional Director, Pacific Region, U.S. Fish and Wildlife Service, Portland, Oregon.

[FR Doc. 2016–26919 Filed 11–7–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[16X.LLAZP01000.L14400000.EQ0000; AZA–035947]

Notice of Realty Action: Classification of Lands for Recreation and Public Purposes Act Lease for the Vulture Mountains Cooperative Recreation Management Area in Maricopa County, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) has examined and found suitable for classification for lease to the Maricopa County Parks and Recreation Department (MCPRD) under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended (43 U.S.C. 869 *et seq.*), approximately 1,046.24 acres of public land in Maricopa County, Arizona. The MCPRD proposes to use the land for recreation purposes. Related improvements include picnic and camping facilities, restrooms, trailheads, developed day use facilities, and parking.

DATES: Interested parties may submit written comments regarding the proposed classification and lease of public lands on or before December 23, 2016.

ADDRESSES: Comments concerning this notice should be addressed to Rem Hawes, Field Manager, BLM Hassayampa Field Office, 21605 North 7th Ave., Phoenix, AZ 85027.

FOR FURTHER INFORMATION CONTACT: Hillary Conner, Realty Specialist, at the above address; phone 623–580–5649; or by email at *hconner@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 1–800–877–8339 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 for the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The following described public lands in Maricopa County, Arizona, are being considered for an R&PP lease.

Gila and Salt River Meridian, Arizona

T. 6 N., R. 5 W.,
sec. 6, lot 8;
sec. 7, lot 1, W½NE¼, SE¼NE¼, NE¼SE¼, and E½NW¼;
sec. 30, lot 4;
sec. 31, lots 1, 2, and 4, and NE¼NW¼.
T. 6 N., R. 6 W.,
sec. 1, S½NW¼, SW¼, S½SE¼, and NW¼SE¼;
sec. 12, N½NE¼ and N½NW¼;
sec. 25, SE¼SE¼.

The areas described contain approximately 1,046 acres, more or less. The MCPRD proposes to use the above described lands for a variety of recreation facilities to be associated with the Vulture Mountains Cooperative Recreation Management Area. This is a cooperatively managed area between the BLM and MCPRD for public lands located south of Wickenburg, Arizona. Related improvements for the proposed lease include picnic and camping facilities, restrooms, trailheads, developed day use facilities, and parking.

Issuance of a lease is in conformance with the Bradshaw Harquahala Resource Management Plan, approved April 2010, through land use authorization decision LR–24, and is in the public's interest. The lands are not needed for any other Federal purpose and the lease will be analyzed in a site-specific environmental analysis.

Upon publication in the **Federal Register**, the lands described above will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease under the R&PP Act and leasing under the mineral leasing laws. Detailed information concerning this action is available for public review during normal business hours at the address above.

The lease, when issued, will be subject to the provisions of the R&PP Act and will contain the following terms, conditions, and reservations:

1. Provisions of the R&PP Act and all applicable regulations of the Secretary of the Interior.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

3. All valid existing rights.

4. An appropriate indemnification clause protecting the United States from claims arising out of the lessee's use, occupancy, or operation of the property. It will also contain any other terms and conditions deemed necessary and appropriate by the Authorized Officer.

5. The lessee shall comply with and shall not violate any of the terms or provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 241), and requirements of the regulations, as modified or amended, of the Secretary of the Interior issued pursuant thereto (43 CFR part 17) for the period that the lands leased herein are used for the purpose for which the grant was made pursuant to the act cited above, or for another purpose involving the provision of similar services or benefits.

Classification Comments: Interested parties may submit comments on the suitability of the lands for a developed recreation area. Comments on the classification are restricted to whether the lands are physically suited for the proposal, whether the use will maximize the future use or uses of the lands, whether the use is consistent with local planning and zoning, or if the use is consistent with Federal and State programs.

Application Comments: Interested parties may submit comments regarding the specific uses proposed in the application and plans of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the lands for recreation purposes. Any adverse comments will be reviewed by the BLM State Director. In the absence of any adverse comments, the classification will become effective on January 9, 2017. The lands will not be offered for lease until after the classification becomes effective.

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 available to the public at any time. While you can ask in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 CFR 2741.5.

Rem Hawes,
Field Manager.

[FR Doc. 2016–26942 Filed 11–7–16; 8:45 am]
BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRSS–CCRP–22342; PPWONRADC0, PPMRSNR1Y.NM0000 (177)]

Information Collection Request; Visitor Perceptions of Climate Change in National Parks

AGENCY: National Park Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (National Park Service, NPS) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB Control Number. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

DATES: To ensure that your comments on this ICR are considered, OMB must receive them on or before December 8, 2016.

ADDRESSES: Please direct all written comments on this ICR directly to the Office of Management and Budget (OMB) Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, to *OIRA_Submission@omb.eop.gov* (email) or 202–395–5806 (fax); and identify your submission as 1024–CCRPSURV. Please also send a copy of your comments to Phadrea Ponds, Information Collection Coordinator, National Park Service, 1201 Oakridge Drive, Fort Collins, CO 80525 (mail); or *phadrea_ponds@nps.gov* (email). Please reference Information Collection 1024–CCRPSURV in the subject line. You may also access this ICR at *www.reginfo.gov.*

FOR FURTHER INFORMATION CONTACT: Larry Perez, Communications Coordinator, Climate Change Response Program, National Park Service, 1201 Oakridge Drive, Fort Collins, CO 80525 (mail); or *larry_perez@nps.gov* (email). Please reference Information Collection 1024–CCRPSURV in the subject line.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information gathered in this collection will be used to assess the efficacy of current and hypothetical park climate change messaging in cultivating both a sense of concern and inspiration to act among visitors. The information will be used primarily by NPS administrators, program managers, interpretive specialists, and educators. Results from the collection will be shared broadly across the NPS for application in the development, design, and delivery of climate change communications products.

II. Data

OMB Control Number: None.

Title: Visitor Perceptions of Climate Change in National Parks.

Type of Request: This is a new collection.

Affected Public: General public; Individual households.

Respondent Obligation: Voluntary.

Frequency of Collection: One time.

Estimated Number of Responses: 2,560.

Estimated Annual Burden Hours: 391 hours. We estimate the public reporting burden for both on-site surveys to be 13 minutes per completed response; two minutes to complete the non-response survey; and seven minutes complete the follow-up survey. These times also includes the time for the initial contact and time to explain the purpose of the study.

Estimated Annual Reporting and Recordkeeping ''Non-Hour Cost'': We have not identified any ''non-hour cost'' burdens associated with this collection of information.

III. Comments

A Notice was published in the **Federal Register** (78 FR 58343) on September 23, 2013 stating that we intended to request OMB approval of our information collection described above. In this Notice, we solicited public comment for 60 days ending November 23, 2013. We did not receive any comments in response to that notice.

We again invite comments concerning this information collection on:

- Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful;
- The accuracy of the agency's estimate of the burden of the proposed collection of information;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. 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.

Dated: November 3, 2016.

Madonna L. Baucum,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2016–26925 Filed 11–7–16; 8:45 am]

BILLING CODE 4310–EH–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–CONC–22109; PPWOBSADC0, PPMVSCS1Y.Y0000]

Notice of Temporary Concession Contract for Marina Operation, Food and Beverage, Retail and Campground Services in Fire Island National Seashore, New York

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service intends to award a temporary concession contract to a qualified person for the conduct of certain visitor services within Fire Island National Seashore for a term not to exceed 1 year. The visitor services include marina operation, food and beverage, retail and campground.

FOR FURTHER INFORMATION CONTACT: Judy Bassett, Northeast Regional Concession Chief, Northeast Region, 200 Chestnut Street, Philadelphia, PA 19106; Telephone (215) 597–4903, by email at *Judy_Bassett@nps.gov.*

SUPPLEMENTARY INFORMATION: The National Park Service intends to award the temporary concession contract, TC–FIIS007–17, to a qualified person (as defined in 36 CFR 51.3) that is currently operating under the existing contract. If the National Park Service is unable to reach acceptable terms, however, it may find another qualified person for the award of the temporary concession contract. The National Park Service has determined that a temporary concession contract not to exceed 1 year is necessary in order to avoid interruption of visitor services, and has taken all reasonable and appropriate steps to consider alternatives to avoid an interruption of visitor services.

Authority: This action is issued pursuant to 36 CFR 51.24(a). This is not a request for proposals.

Mike Reynolds,

Deputy Director, National Park Service.

[FR Doc. 2016–26916 Filed 11–7–16; 8:45 am]

BILLING CODE 4312–53–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–CONC–22069; PPWOBSADC0, PPMVSCS1Y.Y00000]

Sole-Source Concession Contract for Lake Mead National Recreation Area

AGENCY: National Park Service, Interior.

ACTION: Notice of proposed award of sole-source concession contract for Lake Mead National Recreation Area.

SUMMARY: Public notice is hereby given that the National Park Service proposes to award a sole-source concession contract for the conduct of certain visitor services within Lake Mead National Recreation Area (Lake Mead NRA) for a term not to exceed five (5) years. The visitor services include the provision of wireless Internet access within remote but developed areas of Lake Mead NRA.

DATES: The term of the sole-source concession contract will commence (if awarded) no earlier than sixty (60) days from the publication of this notice.

SUPPLEMENTARY INFORMATION: The Director of the National Park Service (NPS) may award a concession contract non-competitively upon a determination that extraordinary circumstances exist under which compelling and equitable considerations require the award of the concession contract to a particular qualified person in the public interest (36 CFR 51.25). Contracts that are awarded non-competitively pursuant to 36 CFR 51.25 are commonly referred to as ''sole-source'' contracts.

The NPS has determined that BladeBeam, Inc. is a ''qualified person'' as defined by 36 CFR 51.3, and has determined that compelling and equitable considerations exist because of the difficulty of providing wireless Internet in the remote but developed areas of Lake Mead NRA, and because BladeBeam, Inc. is willing to make a significant investment with no guaranteed return.

The NPS has determined that a sole-source concession contract is in the public interest because it is the authorization most likely to allow a pilot test of providing wireless Internet services in remote but developed areas of Lake Mead NRA.

This is not a request for proposals. The NPS is seeking approval from the Principal Deputy Assistant Secretary for Fish and Wildlife and Parks contemporaneously.

Dated: October 20, 2016.

Michael Reynolds,

Deputy Director, National Park Service.

[FR Doc. 2016–26915 Filed 11–7–16; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–562 and 731–TA–1329 (Final)]

Ammonium Sulfate From China; Scheduling of the Final Phase of Countervailing Duty and Antidumping Duty Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping and countervailing duty investigation Nos. 701–TA–562 and 731–TA–1329 (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 ammonium sulfate from China, provided for in subheading 3102.21.00 of the Harmonized Tariff Schedule of the United States. The Department of Commerce has preliminarily determined that such imports are subsidized.

DATES: Effective October 24, 2016.

FOR FURTHER INFORMATION CONTACT: Jordan Harriman (202–205–2610), 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 these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—The final phase of these investigations is being scheduled pursuant to sections 705(b) and 731(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)), as a result of an affirmative preliminary determination by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in China of ammonium sulfate.[1] The investigations were requested in petitions filed on May 25, 2016, by Pasadena Commodities International, Nitrogen LLC (Pasadena, Texas).

For further information concerning the conduct of this phase of the investigations, 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 investigations 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 these investigations 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 investigations 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 investigations.

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 these investigations available to authorized applicants under the APO issued in the investigations, 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 investigations. A party granted access to BPI in the preliminary phase of the investigations 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 these investigations will be placed in the nonpublic record on December 28, 2016, 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 these investigations beginning at 9:30 a.m. on Thursday, January 12, 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 January 10, 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 January 10, 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

[1] For purposes of these investigations, the Department of Commerce has defined the subject merchandise as ammonium sulfate in all physical forms, with or without additives such as anti-caking agents. Ammonium sulfate, which may also be spelled as ammonium sulphate, has the chemical formula $(NH_4)_2SO_4$. The scope includes ammonium sulfate that is combined with other products, including by, for example, blending (*i.e.,* mixing granules of ammonium sulfate with granules of one or more other products), compounding (*i.e.,* when ammonium sulfate is compacted with one or more other products under high pressure), or granulating (incorporating multiple products into granules through, *e.g.,* a slurry process). For such combined products, only the ammonium sulfate component is covered by the scope of these investigations. Ammonium sulfate that has been combined with other products is included within the scope regardless of whether the combining occurs in countries other than China. Ammonium sulfate that is otherwise subject to these investigations is not excluded when commingled (*i.e.,* mixed or combined) with ammonium sulfate from sources not subject to these investigations. Only the subject component of such commingled products is covered by the scope of these investigations. The Chemical Abstracts Service (CAS) registry number for ammonium sulfate is 7783–20–2. The merchandise covered by these investigations is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 3102.21.0000. Although this HTSUS subheading and CAS registry number are provided for convenience and customs purposes, the written description of the scope of these investigations is dispositive.

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 January 5, 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 January 19, 2017. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before January 19, 2017. On February 1, 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 February 3, 2017, but such final comments must not contain new factual information and must otherwise comply 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 investigations must be served on all other parties to the investigations (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: These investigations are 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.

Issued: November 3, 2016.

By order of the Commission.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–26951 Filed 11–7–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–992]

Certain Height-Adjustable Desk Platforms and Components Thereof; Commission Determination Not To Review an Initial Determination Granting a Joint Motion To Terminate the Investigation Based on a Settlement Agreement; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 8) granting a joint motion to terminate the investigation based on a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Lucy Grace D. Noyola, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–3438. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*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.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on April 25, 2016, based on a complaint filed by Varidesk LLC of Coppell, Texas (''Complainant''). 81 FR 24128, 24128–29 (Apr. 25, 2016). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain height-adjustable desk platforms and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 9,113,703 and 9,277,809. *Id.* at 24129. The notice of investigation names as respondents Nortek, Inc. of Providence, Rhode Island and Ergotron, Inc. of St. Paul, Minnesota (''Respondents''). *Id.* The Office of Unfair Import Investigations was not named as a party to the investigation. *Id.*

On October 12, 2016, Complainant and Respondents filed a joint motion to terminate the investigation based on a settlement agreement.

On October 14, 2016, the presiding administrative law judge (''ALJ'') issued an ID (Order No. 8) granting the motion. The ALJ found the requirements of Commission Rule 210.21(b)(1) were met. The ALJ also found that termination of the investigation was not contrary to the public interest, and that termination was in the public interest and will conserve public and private resources. No petitions for review of the ID were filed.

The Commission has determined not to review the subject ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: November 3, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–26955 Filed 11–7–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1063–1064, and 1066–1068 (Second Review)]

Frozen Warmwater Shrimp From Brazil, China, India, Thailand, and Vietnam; Scheduling of Full Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation

of the antidumping duty orders on frozen warmwater shrimp from Brazil, China, India, Thailand, and Vietnam would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days.

DATES: *Effective Date:* November 2, 2016.

FOR FURTHER INFORMATION CONTACT: Keysha Martinez (202–205–2136), 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 these reviews may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On June 6, 2016, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews should proceed (81 FR 39711, June 17, 2016); accordingly, full reviews are being scheduled pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

Participation in the reviews 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 these reviews 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, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

For further information concerning the conduct of these reviews 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, D, E, and F (19 CFR part 207).

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 these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews 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 reviews will be placed in the nonpublic record on February 23, 2017, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on Thursday, March 16, 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 March 8, 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 March 10, 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), 207.24, and 207.66 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 to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is March 6, 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 207.67 of the Commission's rules. The deadline for filing posthearing briefs is March 27, 2017. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before March 27, 2017. On April 19, 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 April 21, 2017, but such final comments must not contain new factual information and must otherwise comply with section 207.68 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 reviews must be served on all other parties to the reviews (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.

The Commission has determined that these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C.1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: November 2, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–26899 Filed 11–7–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–996]

Certain Quartz Slabs and Portions Thereof; Commission Determination Not To Review Initial Determinations Terminating the Investigation as to All Respondents; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review (1) an October 12, 2016, initial determination (''Order 20'') granting an unopposed joint motion to terminate the investigation as to one respondent based on a settlement agreement and (2) an October 13, 2016, initial determination (''Order 21'') terminating the investigation as to the last respondent based on complainant's withdrawal of certain allegations in the complaint. This investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Ron Traud, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3427. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*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.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 16, 2016, based on a complaint filed by Cambria Company LLC (''Cambria'') of Belle Plaine, Minnesota. 81 FR 30342 (May 16, 2016). The complaint alleges violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain quartz slabs and portions thereof by reason of infringement of the claims of U.S. Patent Nos. D737,058; D712,670; D713,154; D737,576; D737,577; and D738,630. *Id.* The Notice of Investigation names as respondents Wilsonart LLC (''Wilsonart'') of Denver, Colorado and Dorado Soapstone LLC (''Dorado'') of Temple, Texas. *Id.* The Office of Unfair Import Investigations (''OUII'') was also named as a party. *Id.*

On September 14, 2016, the presiding administrative law judge (''ALJ'') issued an initial determination terminating the investigation as to U.S. Patent No. D737,058. Order 15. On October 13, 2016, the Commission determined not to review that initial determination. Notice of Commission Determination Not to Review an ID Terminating the Investigation as to U.S. Design Patent No. D737,058.

On September 28, 2016, Cambria and Wilsonart jointly moved to terminate the investigation as to Wilsonart based on a settlement agreement. OUII filed a response supporting the motion. Dorado did not oppose the motion. On October 12, 2016, the ALJ issued Order 20, an initial determination granting the motion. The ALJ found that the joint motion complied with the Commission's rules for termination and that consideration of the public interest factors pursuant to 19 CFR 210.50(b)(2) did not prevent termination as to Wilsonart. No party filed a petition seeking review of that initial determination.

On October 6, 2016, Cambria moved to terminate the investigation as to Dorado based on Cambria's withdrawal of certain allegations in the complaint. OUII filed a response supporting the motion. OUII Resp. at 1. Dorado did not oppose the motion. Dorado Resp. at 1. On October 13, 2016, the ALJ issued Order 21, an initial determination granting the motion. No party filed a petition seeking review of that initial determination.

The Commission has determined not to review Orders 20 or 21. This investigation is terminated.

The authority for the Commission's determination is contained in Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: November 3, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–26964 Filed 11–7–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1027]

Certain Food Supplements and Vitamins, Including Ocular Antioxidants and Components Thereof and Products Containing the Same; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 6, 2016, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Kemin Industries, Inc. of Des Moines, Iowa and Kemin Foods, L.C. of Des Moines, Iowa. An amended complaint was filed on October 26, 2016. The complaint, as amended, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain food supplements and vitamins, including ocular antioxidants and components thereof and products containing the same by reason of infringement of certain clams of U.S. Patent No. 8,815,955 (''the '955 patent'') and U.S. Patent No. 9,226,940 (''the '940 patent''). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained 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 at *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.*

FOR FURTHER INFORMATION CONTACT: The Office of the Secretary, U.S. International Trade Commission, telephone (202) 205–2000.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2016).

Scope of Investigation: Having considered the amended complaint, the U.S. International Trade Commission, on November 2, 2016, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain food supplements and vitamins, including ocular antioxidants and components thereof and products containing the same by reason of infringement of one or more of claims 1–13 of the '955 patent and claims 1–13 of the '940 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are: Kemin Industries, Inc., 2100 Maury Street, Des Moines, IA 50317, Kemin Foods, L.C., 2100 Maury Street, Des Moines, IA 50317.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served: OmniActive Health Technologies, Phoenix House, T–8, A Wing, 462 Senapati Bapat Marg, Lower Perel, Mumbai—400 013, India, OmniActive Health Technologies, Inc., 67 East Park Place, Suite 500, Morristown, NJ 07960.

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations will not be named as a party to this investigation.

Responses to the complaint, as amended, and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: November 2, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–26900 Filed 11–7–16; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1122—NEW]

Agency Information Collection Activities; Proposed eCollection eComments Requested; New Collection: Domestic Violence and Housing Technical Assistance Consortium Safe Housing Needs Assessment

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until January 9, 2017.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Cathy Poston, Office on Violence Against Women, at 202–514–5430 or *Catherine.poston@usdoj.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 agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Domestic Violence and Housing Technical Assistance Consortium Safe Housing Needs Assessment.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–NEW. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes housing/homelessness providers and domestic violence/sexual assault service providers.

Domestic violence is a major cause of homelessness, particularly for families with children. Among those families currently experiencing homelessness, more than 80 percent had previously experienced domestic violence. According to the U.S. Conference of Mayors, in 2008, 28% of families were homeless because of domestic violence

and domestic violence is often cited as the primary cause of homelessness. There is a significant need for housing programs that offer supportive services and resources to victims of domestic violence and their children in ways that are trauma-informed and culturally relevant. The Administration for Children and Families (ACF), Family and Youth Services Bureau, Division of Family Violence Prevention and Services (DFVPS), the US Department of Justice Office of Justice Programs Office for Victims of Crime (OJP/OVC), Office on Violence Against Women (OVW), and the Department of Housing and Urban Development (HUD) have established a federal technical assistance consortium that will provide national domestic violence and housing training, technical assistance, and resource development. The Domestic Violence and Housing Technical Assistance Consortium will implement a federally coordinated approach to providing resources, program guidance, training, and technical assistance to domestic violence, homeless, and housing service providers.

The Safe Housing Needs Assessment will be used to determine the training and technical assistance needs of organizations providing safe housing for domestic violence victims and their families.

The Safe Housing Needs Assessment will gather input from community service providers, coalitions and continuums of care. This assessment is the first of its kind aimed at simultaneously reaching the domestic and sexual violence field, as well as the homeless and housing field. The assessment seeks to gather information on topics ranging from the extent to which both fields coordinate to provide safety and access to services for domestic and sexual violence survivors within the homeless system, to ways in which programs are implementing innovative models to promote long-term housing stability for survivors and their families. Additionally, this assessment seeks to identify specific barriers preventing collaboration across these fields, as well as promising practices. The results will help the Consortium provide organizations and communities with the tools, strategies and support necessary to improve coordination between domestic violence/sexual assault service providers and homeless and housing service providers, so that survivors and their children can ultimately avoid homelessness and live free from abuse.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 78,660 respondents approximately fifteen minutes to complete an online assessment tool.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 19,665 hours, that is 78,660 organizations completing an assessment tool one time with an estimated completion time being fifteen 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 3, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–26920 Filed 11–7–16; 8:45 am]

BILLING CODE 4410–FX–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2015–7]

Section 512 Study: Request for Additional Comments

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notice of inquiry.

SUMMARY: The U.S. Copyright Office seeks further comments on the impact and effectiveness of the Digital Millennium Copyright Act (''DMCA'') safe harbor provisions. This request provides an opportunity for interested parties to reply or expand upon issues raised in written comments submitted on or before April 1, 2016, and during the public roundtables held May 2–3, 2016 in New York, and May 12–13, 2016 in San Francisco. The Copyright Office also invites parties to submit empirical research studies assessing issues related to the operation of the safe harbor provisions on a quantitative or qualitative basis.

DATES: Written responses to the questions outlined below must be received no later than 11:59 p.m. Eastern Time on February 6, 2017. Empirical research studies providing quantitative or qualitative data relevant to the subject matter of this study must be received no later than 11:59 p.m. Eastern Time on March 8, 2017.

ADDRESSES: For reasons of government efficiency, the Copyright Office is using the *regulations.gov* system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through *regulations.gov.* Specific instructions for submitting comments are available on the Copyright Office Web site at *http://copyright.gov/policy/section512/comment-submission/.* To meet accessibility standards, all comments must be provided in a single file not to exceed six megabytes (MB) in one of the following formats: Portable Document File (PDF) format containing searchable, accessible text (not an image); Microsoft Word; WordPerfect; Rich Text Format (RTF); or ASCII text file format (not a scanned document). The form and face of the comments must include the name of the submitter and any organization the submitter represents. The Office will post all comments publicly in the form that they are received. If electronic submission of comments is not feasible due to lack of access to a computer and/or the Internet, please contact the Office, using the contact information below, for special instructions.

FOR FURTHER INFORMATION CONTACT: Cindy Abramson, Assistant General Counsel, by email at *ciab@loc.gov* or by telephone at 202–707–8350; Kevin Amer, Senior Counsel for Policy and International Affairs, by email at *kamer@loc.gov* or by telephone at 202–707–8350; or Kimberley Isbell, Senior Counsel for Policy and International Affairs, by email at *kisb@loc.gov* or by telephone at 202–707–8350.

SUPPLEMENTARY INFORMATION:

I. Background

In order to evaluate key parts of the copyright law as it pertains to the digital copyright marketplace, the U.S. Copyright Office is conducting a study to evaluate the impact and effectiveness of the DMCA safe harbor provisions contained in 17 U.S.C. 512. To aid its work in this area, the Office published an initial Notice of Inquiry on December 31, 2015 (''First Notice''), seeking written comments to 30 questions covering eight categories of topics. These included questions about the general efficacy of the DMCA provisions enacted in 1998, as well as the practical costs, and burdens, of the current DMCA environment.[1] The Office received a combination of more than 92,000 written submissions and form replies in response to the First Notice,

[1] *See* Section 512 Study: Notice and Request for Public Comment, 80 FR 81862, 81868 (Dec. 31, 2015).

which can be found on the *regulations.gov* Web site at *https://www.regulations.gov/docket?D=COLC-2015-0013.*

In May 2016, the Copyright Office convened roundtables in New York and San Francisco, each for a two day period. The roundtables provided participants with the opportunity to share their views on the topics identified in the First Notice, as well as any other issues relating to the operation of the DMCA safe harbors.[2] Transcripts of the proceedings at each of the roundtables are available on the Copyright Office Web site at *http://copyright.gov/policy/section512/* under ''Public Roundtables.''[3]

Based on the initial round of written submissions and the results of the roundtable discussions, the Copyright Office believes a number of themes merit additional consideration. Many of these relate to questions of balance, *i.e.,* how to weigh the diverse interests and needs of affected stakeholders, including individual authors and their small businesses, publishers and producers of all sizes, Internet service providers (''ISPs'') of all sizes, and members of the public who may seek to access the Internet on any given day for any number of reasons. The Office is also interested in feedback regarding how to continue to propel the DMCA's underlying public interest objectives, that is, its twin goals of fostering a robust and innovative online environment while protecting the rights of content creators. Within these broad categories, the specific topics participants raised can be further grouped in the following general areas: (1) Characteristics of the current Internet ecosystem; (2) operation of the current DMCA safe harbor system; (3) potential future evolution of the DMCA safe harbor system, including possible legislative improvements; and (4) other developments.

A. Characteristics of the Current Internet Ecosystem

One of the key themes that emerged from the first round of public comments and the roundtable discussions was the diversity of the current Internet ecosystem and the importance of factoring such diversity into any policymaking in the online space. Participants noted that there is a wide variety of experiences and views even within particular stakeholder groups.

For example, study participants pointed out that differences in the characteristics of content creators result in different experiences with the operation of the DMCA safe harbors.[4] They noted that the burden of addressing online infringement without an in-house piracy team is especially great for smaller content creators and businesses, and that some of the tools available to larger content owners are unavailable to smaller creators as a result of cost or other considerations.[5] Similarly, some expressed the view that the quality of takedown notices often varies depending on the identity and size of the content creator, with notices from individuals and smaller entities often being less sophisticated and/or accurate than notices sent by large corporations employing automated processes.[6] Other study participants highlighted the importance of taking into consideration the experiences of non-professional creators who rely on the platforms enabled by the DMCA safe harbors to disseminate and receive remuneration for their works.[7]

Likewise, a heterogeneous picture of ISPs emerged from the first round of comments and the public roundtables, with large deviations in terms of functions, size, resources, and business models, as well as the volume of DMCA takedown notices received on an annual basis. While some of the larger platforms[8] like Google, Facebook, SoundCloud, and Pinterest have devoted resources to implementing automated filtering systems and other tools to remove significant amounts of infringing content,[9] there appear to be many more ISPs that are continuing to operate manual DMCA takedown processes for a lower volume of notices.[10] Some commenters expressed concern that promulgation of rules designed for the former could place an undue burden on the operations of the latter.[11]

In addition, several study participants highlighted the importance of taking into consideration the needs of individual Internet users when developing recommendations for possible changes to the DMCA safe

[2] *See* Section 512 Study: Announcement of Public Roundtables, 81 FR 14896 (Mar. 18, 2016).

[3] References to the transcripts in this document are indicated by ''Tr.,'' followed by the page(s) and line(s) of the reference, the date of the roundtable, and the speaker's name and affiliation.

[4] *See, e.g.,* Tr. at 174:13–17 (May 3, 2016) (Andrew Deutsch, DLA Piper) (''[T]he world of creators runs from individual singer-songwriters to gigantic studios and record producers. They have different needs, different problems, and it really is impossible to create a system that does everything for everyone.'').

[5] *See, e.g.,* Dirs. Guild of Am., Comments Submitted in Response to U.S. Copyright Office's Dec. 31, 2015 Notice of Inquiry at 6 (Apr. 1, 2016) (''To utilize the DMCA notice and takedown mechanism, a rights holder must first prepare notices in exact accordance with the complicated legal requirements of Section 512. Sending these notices to a designated agent of the service provider requires a level of legal expertise that larger rights holders may possess but which smaller creators do not have at their disposal.''); Kernochan Ctr. for Law, Media & the Arts, Columbia Law Sch., Comments Submitted in Response to U.S. Copyright Office's Dec. 31, 2015 Notice of Inquiry at 7 (Apr. 1, 2016) (''The process is burdensome for individuals and entities of any size. Larger entities, which may hold or manage numerous copyrighted works, may use technological tools and many employees or consultants to search for infringing files on the [I]nternet and to file notices in an attempt to get them removed. Independent creators, however, often have to face this issue alone.'').

[6] *See* Tr. at 146:8–20 (May 2, 2016) (Brianna Schofield, Univ. of Cal., Berkeley Sch. of Law) (''[W]e looked at notices sent to Google Images search and these notice senders tended to be individuals, smaller businesses and we saw a much different dynamic here in that these were targeting sites that we might be more fearful would compromise legitimate expression, so blogs, message board threads. . . . Fifteen percent weren't even copyright complaints to start with. They were submitted as a DMCA complaint but they were actually complaining about privacy or defamation, this sort of thing.''); Tr. at 36:3–37:9 (May 12, 2016) (Jennifer Urban, Univ. of Cal., Berkeley Sch. of Law). *But see* Jonathan Bailey, Comments Submitted in Response to U.S. Copyright Office's Dec. 31, 2015 Notice of Inquiry at 2 (Feb. 16, 2016) (''With this automation has come increased mistakes. Machines are simply not as good at detecting infringement and fair use issues as humans.'').

[7] *See, e.g.,* Tr. at 282:21–283:6 (May 13, 2016) (Cathy Gellis, Dig. Age Def.); Tr. at 324:1–15 (May 2, 2016) (Ellen Schrantz, Internet Ass'n).

[8] Larger both in terms of the amount of content that appears on the site, and the technological and monetary resources available to address DMCA notices.

[9] *See, e.g.,* Audible Magic Corp., Comments Submitted in Response to U.S. Copyright Office's Dec. 31, 2015 Notice of Inquiry at 4 (Mar. 21, 2016) (''[U]ser-generated-content sharing and cloud file sharing networks [including Facebook, Dailymotion, SoundCloud, and Twitch] . . . dramatically reduce copyright-infringing media sharing using Audible Magic software and hosted services [to] . . . detect[] registered audio and video content in the user upload stream.''); Pinterest Inc., Comments Submitted in Response to U.S. Copyright Office's Dec. 31, 2015 Notice of Inquiry at 3 (Apr. 1, 2016) (''[O]ur engineering team built a tool that allowed us to . . . attach the author's name to [an] image. . . . Pinterest has also developed tools to help content owners prevent certain content from being saved to Pinterest, and to enable the quick removal of their content if they so wish.'').

[10] *See, e.g.,* Tr. at 111:17–21 (May 12, 2016) (Lila Bailey, Internet Archive) (''The Internet Archive definitely falls into the DMCA Classic [category]. They have a tiny staff . . . and they review every notice they get by a human being.''); Tr. at 157:3–10 (May 12, 2016) (Joseph Gratz, Durie Tangri LLP) (''[T]he Internet from 1998 is still all there . . . it's small OSPs, small content creators, small copyright holders needing remedies for small infringements.''); Tr. at 100:10–15 (May 12, 2016) (Charles Roslof, Wikimedia Found.) (''We operate Wikipedia and . . . despite the large amount of content we host, we receive very few takedown notices.'').

[11] *See* Internet Ass'n, Comments Submitted in Response to U.S. Copyright Office's Dec. 31, 2015 Notice of Inquiry at 15 (Mar. 31, 2016) (''[S]tartups and small businesses lack the sophisticated resources of larger, more established businesses in responding to takedown requests.'').

harbor system.[12] Participants emphasized that the DMCA counter-notice process is an important mechanism to protect the legitimate online speech of individual Internet users, and that the proliferation of diverse platforms and services made possible by the DMCA safe harbors provides a critical benefit for the public.

B. Operation of the Current DMCA Safe Harbor System

While some study participants asserted that the section 512 safe harbors are currently operating effectively and as Congress intended, a number of participants identified various shortcomings and barriers for content creators, ISPs, and individual Internet users. These differing views were especially stark when comparing the experiences of content creators (large and small) with the experiences of online service providers.[13] ISPs generally painted a picture of a thriving and vibrant Internet ecosystem that was largely the result of the safeguards and protections of the DMCA safe harbors.[14] While ISP participants acknowledged the ever-increasing volume of takedown notices that are now being sent, they viewed the ability of larger ISPs to accommodate the increased volume as an example of the overall success of the system.[15] In stark contrast, many content creators of all sizes bemoaned what they saw as the inefficiency and ineffectiveness of the system.[16] These participants complained about the time and resources necessary to police the Internet and viewed the ever-increasing volume of notices as an example of the DMCA notice-and-takedown regime's failure to sufficiently address the continued proliferation of online infringement.[17]

ISPs, civic organizations, and content creators also expressed differing views regarding the extent to which false or abusive notices are a problem under the current system, and the effectiveness of the counter-notice process for ensuring access to legitimate content. Several ISPs and civic groups pointed to abusive notices as one of the primary shortcomings of the safe harbor regime. They pointed to the length of time required to have material replaced after a counter-notice,[18] and argued that having non-infringing content removed even for a few days can severely impact a business.[19] Several groups cited recent data released by researchers at the University of California, Berkeley School of Law as evidence of the scope of the problem.[20] Some content creators, on the other hand, expressed the view that abusive notices are in fact quite rare[21] and that the number of improper notices pales in comparison to the overwhelming volume of infringing content. They argued that the counter-notice process sufficiently protects legitimate material,[22] and pointed out that the financial burden of bringing a federal court case to prevent the reposting of infringing material within days of receiving a counter-notice makes the provision unusable in practice.[23]

Both content creators and ISPs identified shortcomings in their abilities to efficiently process notices under the current system. ISPs identified the difficulty of receiving notices through multiple channels (*e.g.,* email, web form, fax, etc.),[24] as well as incomplete or unclear notices,[25] as barriers to efficient processing of takedown requests. Several ISPs have reported moving to the use of web forms for receipt of takedown notices in order to overcome some of these difficulties.[26]

In contrast, many content creators identified ISP-specific web forms as a barrier to effective use of the notice-and-takedown process, increasing the amount of time required to have the same material taken down across multiple platforms.[27] Other barriers to use of the notice-and-takedown process identified by content creators included additional ISP-created requirements that some claimed go far beyond the requirements of the DMCA,[28] and

[12] *See* Pub. Knowledge, Comments Submitted in Response to U.S. Copyright Office's Dec. 31, 2015 Notice of Inquiry at 4 (Apr. 1, 2016) (''Section 512 appropriately balances the interests of online platforms and copyright owners . . . . Where the balance is acutely in need of recalibration, though, is with respect to user rights.''); Tr. at 101:4–10 (May 13, 2016) (Daphne Keller, Stanford Law Sch. Ctr. for Internet & Soc'y).

[13] *Compare* Tr. at 92:6–11 (May 12, 2016) (Jordan Berliant, Revelation Mgmt. Grp.) (''I'm very concerned about even our biggest client's ability to earn a living under the current copyright protection system, which, in effect, sanctions the infringement of their rights and is devastating to the revenue that they can earn from recording music.''), *and* Tr. at 119:1–5 (May 2, 2016) (Jennifer Pariser, Motion Picture Ass'n of Am.) (''[T]his is where on the content side we feel the imbalance comes, that [processing takedown notices is] a cost of doing business for an online service provider that is relatively manageable for them, whereas on the creation side, we're being killed by piracy.''), *with* Facebook, Inc., Comments Submitted in Response to U.S. Copyright Office's Dec. 31, 2015 Notice of Inquiry at 4 (Apr. 1, 2016) (''It is quite effective. . . . [W]hile the DMCA by necessity imposes some burden on the respective parties, its procedures unquestionably result in the effective and consistent removal of infringing content from the Internet.''), *and* Amazon.com, Inc., Comments Submitted in Response to U.S. Copyright Office's Dec. 31, 2015 Notice of Inquiry at 3–4 (Apr. 1, 2016) (discussing the role of section 512 in fostering a balanced copyright regime that allows Internet creativity and innovation).

[14] *See* Intel Corp., Comments Submitted in Response to U.S. Copyright Office's Dec. 31, 2015 Notice of Inquiry at 4–5 (Apr. 1, 2016) (''As stated in the House Report, the goal of the [Digital Millennium Copyright] Act was to lubricate the legitimate distribution of creative content. When measured by these Congressional yardsticks, Section 512 has been a stunning success. . . . At the same time, Congress desired to preserve 'strong incentives for service providers and copyright owners to cooperate to detect and deal with copyright infringements that take place in the digital networked environment.' Intel believes that the Act has done just that.'').

[15] *See, e.g.,* New Am.'s Open Tech. Inst., Comments Submitted in Response to U.S. Copyright Office's Dec. 31, 2015 Notice of Inquiry at 3 (Apr. 1, 2016); Tr. at 77:7–13 (May 13, 2016) (Fred von Lohmann, Google, Inc.) (''I disagree with people who think that a large volume of notices is a sign of failure; in fact, quite the contrary. If the notices weren't doing any good, if it was too expensive to send, we would expect the numbers to be falling, not rising. And in fact, we see them rising because the systems are more efficient.'').

[16] *See, e.g.,* Am. Ass'n of Indep. Music et al., Joint Comments Submitted in Response to U.S. Copyright Office's Dec. 31, 2015 Notice of Inquiry at 21 (Apr. 1, 2016); T Bone Burnett et al., Joint Comments Submitted in Response to U.S. Copyright Office's Dec. 31, 2015 Notice of Inquiry at 2 (Apr. 1, 2016).

[17] *See, e.g.,* Tr. at 108:2–5 (May 13, 2016) (Dean Marks, Motion Picture Ass'n of Am.).

[18] *See, e.g.,* Jill Doe, Comments Submitted in Response to U.S. Copyright Office's Dec. 31, 2015 Notice of Inquiry at 2 (Mar. 21, 2016); Verizon Commc'ns, Comments Submitted in Response to U.S. Copyright Office's Dec. 31, 2015 Notice of Inquiry at 18 (Apr. 1, 2016).

[19] *See, e.g.,* Tr. at 153:3–17 (May 2, 2016) (Rebecca Prince, Becky Boop); Tr. at 75:4–8 (May 12, 2016) (Alex Feerst, Medium); Tr. at 164:9–16 (May 12, 2016) (Joseph Gratz, Durie Tangri LLP).

[20] *See, e.g.,* Engine et al., Comments Submitted in Response to U.S. Copyright Office's Dec. 31, 2015 Notice of Inquiry at 9 (Apr. 1, 2016); Internet Commerce Coal., Comments Submitted in Response to U.S. Copyright Office's Dec. 31, 2015 Notice of Inquiry at 3 (Apr. 1, 2016).

[21] *See, e.g.,* Tr. at 155:9–13 (May 2, 2016) (Steven Rosenthal, McGraw-Hill Educ.); Tr. at 183:21–184:1 (May 12, 2016) (Gabriel Miller, Paramount Pictures Corp.).

[22] *See* Copyright All., Comments Submitted in Response to U.S. Copyright Office's Dec. 31, 2015 Notice of Inquiry at 20–21 (Apr. 1, 2016).

[23] *See, e.g.,* Dig. Media Licensing Ass'n, Inc. et al., Joint Comments Submitted in Response to U.S. Copyright Office's Dec. 31, 2015 Notice of Inquiry at 7 (Apr. 1, 2016); Sony Music Entm't, Comments Submitted in Response to U.S. Copyright Office's Dec. 31, 2015 Notice of Inquiry at 16 (Apr. 1, 2016) (citing the cost of litigation as accounting for the fact that ''since 2008, thousands of videos infringing Sony's copyrights have been reinstated on YouTube due to counter notifications not being contested by Sony'' even though ''[i]n the vast majority of those instances, there was no legitimate question that the use infringed Sony's exclusive rights'').

[24] *See* Tr. at 54:22–55:11 (May 3, 2016) (Matthew Schruers, Comput. & Commc'ns Indus. Ass'n).

[25] *See* Internet Archive, Comments Submitted in Response to U.S. Copyright Office's Dec. 31, 2015 Notice of Inquiry at 3 (Mar. 22, 2016).

[26] *See* Jennifer M. Urban, Joe Karaganis & Brianna L. Schofield, *Notice and Takedown in Everyday Practice* 37 (UC Berkeley Pub. Law Research, Paper No. 2755628, 2016), *http://ssrn.com/abstract=2755628.*

[27] *See* Ass'n of Am. Publishers, Comments Submitted in Response to U.S. Copyright Office's Dec. 31, 2015 Notice of Inquiry at 7 (Apr. 1, 2016); Tr. at 19:5–11 (May 12, 2016) (Devon Weston, Digimarc).

[28] *See, e.g.,* Ellen Seidler, Fast Girl Films, Comments Submitted in Response to U.S. Copyright

privacy concerns stemming from the public release of personal information about the notice sender.[29]

Study participants noted similar barriers that discourage users from submitting counter-notices, even in response to what some consider to be erroneous or fraudulent takedown notices. The identified barriers included a similar lack of standardization for filing counter-notices, a lack of education regarding the counter-notice process, privacy concerns, and the threat of potential legal proceedings.[30]

In addition to noting practical barriers that may make utilization of the safe harbor system difficult, several commenters pointed to court opinions that they argue have decreased the effectiveness of the statutory scheme created by Congress. These developments include judicial interpretations of the actual and red flag knowledge standards, the right and ability to control and financial benefit tests, section 512's references to ''representative lists,'' and section 512's requirement that ISPs implement a repeat infringer policy. Some content creators and others expressed concern that the first three developments, taken together, have systematically changed the application of section 512, tipping it in favor of ISPs,[31] while a number of ISPs expressed concerns about the ongoing impact of recent repeat infringer jurisprudence.[32]

One other debate between content creators and ISPs relates to the fact that section 512 sets forth a variety of differing safe harbor requirements for ISPs depending upon the function they are performing (*i.e.,* mere conduit, hosting, caching, or indexing). Thus, several telecommunications providers asserted that section 512 imposes no obligation on ISPs either to accept or act upon infringement notices when they are acting as a mere conduit under section 512(a).[33] Some content creators, however, expressed concern that failure to accept such notices, even if not part of a formal notice-and-takedown process, would weaken the requirement that ISPs adopt and reasonably implement a section 512(i) repeat infringer policy.[34]

C. Potential Future Evolution of the DMCA Safe Harbor System

Study participants have suggested a number of potential solutions to the issues raised above, though it should be understood that these solutions stem only from the subset of stakeholders who suggest or acknowledge in the first instance that the current regime requires or could benefit from changes. These solutions included both non-legislative solutions (such as education, the use of technology, or voluntary and standard technical measures) and legislative fixes (either through changes to section 512 itself or passage of legislation to address issues not directly addressed by section 512).

The non-legislative solution that appeared to have the broadest approval was the idea of creating governmental and private-sector educational materials on copyright and section 512. Participants recommended the creation of targeted educational materials for all participants in the Internet ecosystem, including content creators,[35] users,[36] and ISPs.[37]

A number of study participants noted that technology can help address some of the inefficiencies of the current notice-and-takedown process. Some participants cited increased efficiencies to be had from both automated notices and takedowns, as well as other technological tools.[38] Other participants, however, cautioned against over reliance on technology. Several reasons for questioning the ability of technology to resolve problems with the current system were mentioned, including the expense of developing systems capable of handling notice-and-takedown processes, concerns that automated processes may be more vulnerable to false positives, and the limited capabilities of even the most advanced current technology.[39]

Another potential non-legislative solution that was suggested was the development and adoption of industry-wide, or sub-industry-specific, voluntary measures[40] and standard technical measures,[41] and/or the standardization of practices for notice and takedown.[42] A number of study

Office's Dec. 31, 2015 Notice of Inquiry at 2 (Apr. 1, 2016) (''Because the email address for Google's DMCA Agent is not posted on its Web sites, rights holders must jump through various hoops and navigate through a series of questions in order to arrive at the correct form. Once there it takes additional time to complete the 9-part form. Before one can actually send it one must be sure to create a Google account, then login and send.''); Tr. at 59:14–19 (May 2, 2016) (Lisa Shaftel, Graphic Artists Guild).

[29] *See, e.g.,* Arts & Entm't Advocacy Clinic at George Mason Univ. Sch. of Law, Comments Submitted in Response to U.S. Copyright Office's Dec. 31, 2015 Notice of Inquiry at 11 (Apr. 1, 2016) (''[P]ublicly revealing personal information about a notice sender may endanger the artist's property and safety.'').

[30] *See, e.g.,* Rodrigo Adair, Comments Submitted in Response to U.S. Copyright Office's Dec. 31, 2015 Notice of Inquiry at 1–2 (Mar. 18, 2016); New Media Rights, Comments Submitted in Response to U.S. Copyright Office's Dec. 31, 2015 Notice of Inquiry at 16–17 (Apr. 1, 2016); Tr. at 253:5–7 (May 13, 2016) (Michael Michaud, Channel Awesome, Inc.).

[31] *See, e.g.,* Matthew Barblan et al., Joint Comments Submitted in Response to U.S. Copyright Office's Dec. 31, 2015 Notice of Inquiry at 1 (Apr. 1, 2016); Tr. at 196:25–197:12 (May 3, 2016) (June Besek, Kernochan Ctr. for Law, Media & the Arts) (''[I]n the last 18 years or so, I think courts have often placed a lot of emphasis on the ability of service providers to flourish and grow and perhaps less emphasis on the concerns of right holders. And you can see that in a lot of different ways—defining storage very broadly, defining red flag knowledge very narrowly, reading representative lists out of the statute, basically, leaving right holders with little recourse other than sending notice after notice after notice to prevent reposting of their material. And they can never really prevent it.'').

[32] *See, e.g.,* Am. Cable Ass'n, Comments Submitted in Response to U.S. Copyright Office's Dec. 31, 2015 Notice of Inquiry at 5 (Apr. 1, 2016); CTIA—The Wireless Ass'n, Comments Submitted in Response to U.S. Copyright Office's Dec. 31, 2015 Notice of Inquiry at 11–12 (Apr. 1, 2016).

[33] *See, e.g.,* Tr. 65:24–67:21 (May 2, 2016) (Jacqueline Charlesworth, U.S. Copyright Office; Patrick Flaherty, Verizon Commc'ns).

[34] *See* Tr. 257:12–15 (May 2, 2016) (David Jacoby, Sony Music Entm't).

[35] *See* Tr. at 73:23–74:8 (May 2, 2016) (Lisa Hammer, independent film director).

[36] *See* Tr. at 52:6–10 (May 2, 2016) (Janice Pilch, Rutgers Univ. Libraries); Tr. at 279:21–281:8 (May 12, 2016) (Brian Willen, Wilson Sonsini Goodrich); Tr. at 253:22–254:11 (May 13, 2016) (Michael Michaud, Channel Awesome, Inc.).

[37] *See* Future of Music Coal., Comments Submitted in Response to U.S. Copyright Office's Dec. 31, 2015 Notice of Inquiry at 18 (Apr. 1, 2016).

[38] *See, e.g.,* Universal Music Grp., Comments Submitted in Response to U.S. Copyright Office's Dec. 31, 2015 Notice of Inquiry at 18 (Apr. 1, 2016); Tr. at 97:17–98:4 (May 13, 2016) (Betsy Viola Zedek, The Walt Disney Co.).

[39] *See, e.g.,* Wikimedia Found., Comments Submitted in Response to U.S. Copyright Office's Dec. 31, 2015 Notice of Inquiry at 7 (Apr. 1, 2016); Tr. at 312:16–20 (May 2, 2016) (Sarah Feingold, Etsy, Inc.).

[40] While many of the voluntary measures discussed by study participants were technological in nature (such as Google's Content ID system), there were other programs that some participants pointed to as potential blueprints for private action to improve the operation of the safe harbor processes, including development of industry best practices guidelines; initiatives like the Copyright Alert System; cooperative arrangements between content owners and payment processors, advertisers, and domain name registries; and voluntary demotion of infringing results by search engines. Although many participants expressed optimism that voluntary agreements could help improve the efficacy of the safe harbor system, other participants cautioned that voluntary measures should be viewed as supplements to reform, rather than replacements for it. *See* Content Creators Coal., Comments Submitted in Response to U.S. Copyright Office's Dec. 31, 2015 Notice of Inquiry at 27–30 (Apr. 1, 2016). Still others objected to the idea of voluntary agreements as unrepresentative and potentially undemocratic. *See, e.g.,* Elec. Frontier Found., Comments Submitted in Response to U.S. Copyright Office's Dec. 31, 2015 Notice of Inquiry at 15 (Apr. 1, 2016); Tr. at 177:17–22 (May 13, 2016) (Michael Masnick, Copia Institute); Tr. at 171:8–13 (May 13, 2016) (T.J. Stiles, author).

[41] *See* Tr. at 173:18–174:16 (May 13, 2016) (Sean O'Connor, Univ. of Washington (Seattle)) (''[O]ne-size-fits-all can't work . . . [but] if you create a taxonomy that [covers the] different kinds of content industry and also different kind[s] of service providers . . . you can . . . [c]ome up with . . . standard technical measures for that particular subdivision area.'').

[42] *See, e.g.,* Info. Tech. & Innovation Found., Comments Submitted in Response to U.S. Copyright

Continued

participants pointed to the failure to adopt standard technical measures under section 512(i), nearly two decades after passage of the DMCA, as a demonstrable failure of the current section 512 system.[43] Some study participants suggested that there may be a role for the government generally, or the U.S. Copyright Office in particular, to play in encouraging or supporting the adoption of such standard technical measures by convening groups of relevant stakeholders.[44]

Another potential solution proposed by some of the participants was legislative action to improve the section 512 safe harbor system, either by amending the statute itself, or adopting ancillary legislative reform proposals. The most frequently discussed potential legislative change was adoption of a notice-and-stay-down requirement.[45] Although many participants suggested a pressing need for such a requirement, they have not defined what is meant by ''stay-down,'' or what specific mechanisms might be utilized to comply with such a requirement. Some participants equated a notice-and-stay-down system with the use of a content filtering system like Content ID to pre-screen user uploads.[46] Other participants seemed to equate a notice-and-stay-down system with a requirement for the ISP to search its site for identical files upon receipt of a takedown notice from a rightsholder.[47] Many study participants, however, raised concerns about the possible adoption of a notice-and-stay-down requirement, citing both policy and practical/technological concerns.[48]

D. Other Developments

The Copyright Office is also seeking comments on three additional topics: judicial opinions that were not covered by the initial round of public comments, the disposition of Internet safe harbors under foreign copyright laws, and empirical research into the effectiveness, impact, and utilization of the current section 512 safe harbors.

The Copyright Office is interested in hearing from the public about judicial decisions issued since the first round of public comments closed in April 2016, and how they may impact the workings of one or more aspects of the section 512 safe harbors. These include, in particular, recent decisions from the Eastern District of Virginia and the Second Circuit. In *BMG Rights Management (US)* v. *Cox Communications, Inc.,* currently on appeal to the Fourth Circuit, the Eastern District of Virginia upheld a jury verdict that the defendant ISP was liable for willful contributory infringement based on its subscribers' use of BitTorrent to download and share copyrighted material.[49] The court found that the defendant was not able to invoke the section 512(a) safe harbor as a result of its failure to reasonably implement a repeat infringer policy.[50] In *Capitol Records, LLC* v. *Vimeo LLC,* the Second Circuit found that (1) the section 512(c) safe harbor extends to claims for infringement of pre-1972 sound recordings, which are protected under state, rather than federal, copyright laws, and (2) the fact that a defendant ISP's employee viewed a video that ''contains all or virtually all of a recognizable copyrighted song'' is insufficient to provide the ISP with actual or red flag knowledge of infringement.[51]

Similarly, while some of the initial written responses and roundtable discussions touched upon Internet safe harbor regimes outside the United States,[52] the Copyright Office welcomes additional information about foreign approaches to the questions of ISP safe harbors, Internet piracy, and other relevant topics.

Finally, the Copyright Office is asking for the submission of additional analyses and empirical data related to the effectiveness, impact, and utilization of the current section 512 safe harbors. While several participants referenced a trio of recent studies performed by researchers at the University of California, Berkeley School of Law, others noted that a nucleus of authoritative studies and evidence is still lacking, overall.[53] Given the economic importance of both the creative and technology industries to the U.S. economy, policymaking relating to the proper calibration of the costs and benefits of ISP safe harbors would benefit from a robust record of authoritative data. Potential subject matter for relevant submissions would include data relating to the number of improper takedown or counter-notices received by different classes of ISPs, information relating to the percentage of files that are re-uploaded following submission of a valid takedown notice, information regarding the effectiveness or ineffectiveness of takedown notices for combating different forms of piracy both here and abroad, the economic impact of policy choices relating to ISP safe harbors, and other topics.

II. Subjects of Inquiry

The Copyright Office seeks further public input in the form of written comments responsive to this Notice and the issues discussed above, as well as the submission of studies and empirical data relevant to the subject matter of this study. Parties may also take this opportunity to respond to positions or data raised in the first round of comments and/or at the roundtables.

Office's Dec. 31, 2015 Notice of Inquiry at 5 (Mar. 21, 2016) (''[T]he tools . . . used by online service providers to prevent and stop infringement vary widely. To address this problem, the U.S. Copyright Office should launch a multi-stakeholder working group to identify . . . [ways] to reduce infringement and lower compliance costs for all parties. For example . . . . standardize[d] notice-and-takedown processes across multiple service providers . . . .''); Tr. at 164:12–165:13 (May 13, 2016) (Dave Green, Microsoft) (suggesting a ''summit attended primarily by engineers,'' potentially including ''government support or encouragement . . . to come up with ways to make it easy to report . . . a single work to multiple ISPs without having to send notices multiple times'').

[43] *See, e.g.,* Tr. 68:22–69:12 (May 3, 2016) (Lisa Willmer, Getty Images); Tr. 18:10–21:6 (May 13, 2016) (Karyn Temple Claggett, U.S. Copyright Office; Keith Kupferschmid, Copyright All.).

[44] *See* Tr. 250:23–251:1 (May 3, 2016) (Todd Dupler, Recording Acad.).

[45] *See, e.g.,* Indep. Film & Television All., Comments Submitted in Response to U.S. Copyright Office's Dec. 31, 2015 Notice of Inquiry at 4 (Apr. 1, 2016); Tr. at 230:11–23 (May 3, 2016) (Matthew Barblan, Ctr. for the Prot. of Intellectual Prop.).

[46] *See* Council of Music Creators et al., Joint Comments Submitted in Response to U.S. Copyright Office's Dec. 31, 2015 Notice of Inquiry at 3 (Apr. 1, 2016).

[47] *See* Authors Guild, Inc., Comments Submitted in Response to U.S. Copyright Office's Dec. 31, 2015 Notice of Inquiry at 14 (Apr. 1, 2016) (''Here's an example of how 'notice and stay-down' might work in practice: an author finds a pirated copy of her book on Google Play, offered by a user who has created an account called 'Best Books.'. . . She sends a notice to Google, with an image of the fake cover and false publisher name, along with a URL for the pirated copy. Google takes the copy down a day later. The next day, the same book with the same cover is reposted on the site. From then on, Google should be required to automatically remove any instance of the entire book that anyone other than an authorized person (as provided by the copyright owner) posts on the site.'').

[48] *See, e.g.,* Facebook, Inc., Comments Submitted in Response to U.S. Copyright Office's Dec. 31, 2015 Notice of Inquiry at 6 (Apr. 1, 2016); Internet Archive, Comments Submitted in Response to U.S. Copyright Office's Dec. 31, 2015 Notice of Inquiry at 2 (Mar. 22, 2016).

[49] *BMG Rights Mgmt. (US) LLC* v. *Cox Commc'ns., Inc.,* No. 1:14–cv–1611, 2016 WL 4224964 (E.D. Va. Aug. 8, 2016), *appeal docketed,* No. 16–1972 (4th Cir. Aug. 24, 2016).

[50] *Id.* at *4.

[51] *Capitol Records, LLC* v. *Vimeo, LLC,* 826 F.3d 87–98 (2d Cir. 2016).

[52] *See, e.g.,* Ctr. for Democracy & Tech. & R Street Inst., Joint Comments Submitted in Response to U.S. Copyright Office's Dec. 31, 2015 Notice of Inquiry at 19 n.79 (Apr. 1, 2016); Tr. 114:24–115:6 (May 3, 2016) (Victoria Sheckler, Recording Indus. Ass'n of Am.); Tr. 325:16–20 (May 12, 2016) (Daphne Keller, Stanford Law Sch. Ctr. for Internet & Soc'y).

[53] *See, e.g.,* Tr. at 255:11–12 (May 13, 2016) (Sean O'Connor, Univ. of Washington (Seattle)) (''[O]n the empirical research side, I do think we need to do a lot more . . . .''); Tr. at 260:3–4 (May 13, 2016) (Fred von Lohmann, Google, Inc.) (''We need more and better data.'').

Participants should, however, refrain from simply restating positions taken at the roundtables or previously submitted in response to the First Notice; such comments have already been made part of the record. While a party choosing to respond to this Notice of Inquiry need not address every subject below, the Office requests that responding parties clearly identify and separately address each subject for which a response is submitted.

Characteristics of the Current Internet Ecosystem

1. As noted above, there is great diversity among the categories of content creators and ISPs who comprise the Internet ecosystem. How should any improvements in the DMCA safe harbor system account for these differences? For example, should any potential new measures, such as filtering or stay-down, relate to the size of the ISP or volume of online material hosted by it? If so, how? Should efforts to improve the accuracy of notices and counter-notices take into account differences between individual senders and automated systems? If so, how?

2. Several commenters noted the importance of taking into account the perspectives and interests of individual Internet users when considering any changes to the operation of the DMCA safe harbors. Are there specific issues for which it is particularly important to consult with or take into account the perspective of individual users and the general public? What are their interests, and how should these interests be factored into the operation of section 512?

Operation of the Current DMCA Safe Harbor System

3. Participants expressed widely divergent views on the overall effectiveness of the DMCA safe harbor system. How should the divergence in views be considered by policy makers? Is there a neutral way to measure how effective the DMCA safe harbor regime has been in achieving Congress' twin goals of supporting the growth of the Internet while addressing the problem of online piracy?

4. Several public comments and roundtable participants noted practical barriers to effective use of the notice-and-takedown and counter-notice processes, such as differences in the web forms used by ISPs to receive notices or adoption by ISPs of additional requirements not imposed under the DMCA (*e.g.,* submission of a copyright registration or creation of certain web accounts). What are the most significant practical barriers to use of the notice-and-takedown and counter-notice processes, and how can those barriers best be addressed (*e.g.,* incentives for ISPs to use a standardized notice/counter-notice form, etc.)?

5. A number of study participants identified the timelines under the DMCA as a potential area in need of reform. Some commenters expressed the view that the process for restoring access to material that was the subject of a takedown notice takes too long, noting that the material for which a counter-notice is sent can ultimately be inaccessible for weeks or months before access is restored. Other commenters expressed the view that the timeframe for restoring access to content is too short, and that ten days is not enough time for a copyright holder to prepare and file litigation following receipt of a counter-notice. Are changes to the section 512 timeline needed? If so, what timeframes for each stage of the process would best facilitate the dual goals of encouraging online speech while protecting copyright holders from widespread online piracy?

6. Participants also noted disincentives to filing both notices and counter-notices, such as safety and privacy concerns, intimidating language, or potential legal costs. How do these concerns affect use of the notice-and-takedown and counter-notice processes, and how can these disincentives best be addressed?

7. Some participants recommended that the penalties under section 512 for filing false or abusive notices or counter-notices be strengthened. How could such penalties be strengthened? Would the benefits of such a change outweigh the risk of dissuading notices or counter-notices that might be socially beneficial?

8. For ISPs acting as conduits under section 512(a), what notice or finding should be necessary to trigger a repeat infringer policy? Are there policy or other reasons for adopting different requirements for repeat infringer policies when an ISP is acting as a conduit, rather than engaging in caching, hosting, or indexing functions?

Potential Future Evolution of the DMCA Safe Harbor System

9. Many participants supported increasing education about copyright law generally, and/or the DMCA safe harbor system specifically, as a non-legislative way to improve the functioning of section 512. What types of educational resources would improve the functioning of section 512? What steps should the U.S. Copyright Office take in this area? Is there any role for legislation?

10. How can the adoption of additional voluntary measures be encouraged or incentivized? What role, if any, should government play in the development and implementation of future voluntary measures?

11. Several study participants pointed out that, since passage of the DMCA, no standard technical measures have been adopted pursuant to section 512(i). Should industry-wide or sub-industry-specific standard technical measures be adopted? If so, is there a role for government to help encourage the adoption of standard technical measures? Is legislative or other change required?

12. Several study participants have proposed some version of a notice-and-stay-down system. Is such a system advisable? Please describe in specific detail how such a system should operate, and include potential legislative language, if appropriate. If it is not advisable, what particular problems would such a system impose? Are there ways to mitigate or avoid those problems? What implications, if any, would such as system have for future online innovation and content creation?

13. What other specific legislative provisions or amendments could improve the overall functioning of the DMCA safe harbor regime? Please be specific, including proposed statutory language as appropriate.

Other Developments

14. Several study participants mentioned concerns regarding certain case law interpretations of the existing provisions of section 512. Additionally, two new judicial decisions have come out since the first round of public comments was submitted in April 2016. What is the impact, if any, of these decisions on the effectiveness of section 512? If you believe it would be appropriate to address or clarify existing provisions of section 512, what would be the best ways to address such provisions (*i.e.,* through the courts, Congress, the Copyright Office, and/or voluntary measures)? Please provide specific recommendations, such as legislative language, if appropriate.

15. What approaches have jurisdictions outside the United States taken to address the question of ISP liability and the problem of copyright infringement on the Internet? To what extent have these approaches worked well, or created problems for consumers, content creators, ISPs, or other stakeholders?

16. Please identify any other pertinent issues that the Copyright Office may

wish to consider in conducting this study.

Submission of Empirical Research To Aid the Study

Many commenters expressed a desire for more comprehensive empirical data regarding the functioning and effects of the DMCA safe harbor system. The Copyright Office is providing an extended deadline for submissions of empirical research on any of the topics discussed in this Notice, or other topics that are likely to provide useful data to assess and/or improve the operation of section 512.

Dated: November 2, 2016.

Karyn Temple Claggett,

Acting Register of Copyrights and Director of the U.S. Copyright Office.

[FR Doc. 2016–26904 Filed 11–7–16; 8:45 am]

BILLING CODE 1410–30–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2017–005]

George W. Bush Presidential Library; Disposal of Presidential Records

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of proposed disposal of Presidential records; request for public comment.

SUMMARY: The National Archives and Records Administration (NARA) has identified certain Presidential records from the George W. Bush Presidential Library as appropriate for disposal under the provisions of 44 U.S.C. 2203(f)(3). This notice describes our reasons for determining that these records do not warrant retaining any longer.

This notice does not constitute a final agency action, as described in 44 U.S.C. 2203(f)(3), and we will not dispose of any Presidential records following this notice. After reviewing any comments we receive during this 45-day notice and comment period, we will make a decision on the records. If we decide to dispose of them, we will issue a second, 60-day advance notice, which constitutes a final agency action.

DATES: Comments are due by December 23, 2016.

LOCATION: Submit written comments by mail to Director, Presidential Libraries; National Archives and Records Administration (LP), Suite 2200; 8601 Adelphi Road; College Park, MD 20740–6001, or by fax to 301.837.3199.

FOR FURTHER INFORMATION CONTACT: Susan K. Donius at 301.837.3250.

SUPPLEMENTARY INFORMATION: We propose the following materials for disposal because we have determined that they lack continuing administrative, historical, information, or evidentiary value.

The items identified include (full list below) ephemera located within the Staff Member Office Files and White House Office of Records Management Subject/Alpha Files of the George W. Bush Presidential Library:

NASA Pin
Connecting to Collections Black Shoulder Bag
Metal Edge, Inc. Mini Hollinger
IMLS Level and Tape Measurer
White Cotton Gloves
Faith Bottle
Indian River Community College Educational Program
Honor Cats Banners

Dated: October 25, 2016.

Susan K. Donius,

Director, Office of Presidential Libraries.

[FR Doc. 2016–26952 Filed 11–7–16; 8:45 am]

BILLING CODE 7515–01–P

THE NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Notice of Proposed Information Collection Request: Community Catalyst: The Role of Libraries and Museums in Community Transformation (Community Catalyst)—A National Leadership Grants Special Initiative

AGENCY: Institute of Museum and Library Services, National Foundation for the Arts and the Humanities.

ACTION: Notice, request for comments, collection of information.

SUMMARY: The Institute of Museum and Library Service (''IMLS'') as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). This pre-clearance consultation program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The purpose of this Notice is to solicit comments concerning The Role of Libraries and Museums in Community Transformation (Community Catalyst)—A National Leadership Grants Special Initiative.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before January 5, 2017.

The IMLS is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

ADDRESSES: For a copy of the documents contact: Dr. Marvin Carr, Senior Advisor, STEM and Community Engagement, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW., Suite 4000, Washington, DC 20024. Dr. Carr can be reached by telephone: 202–653–4752; fax: 202–653–4603; email: *mcarr@imls.gov* or by *teletype* (TTY/TDD) for persons with hearing difficulty at 202–653–4614.

SUPPLEMENTARY INFORMATION:

I. Background

The Institute of Museum and Library Services is the primary source of federal support for the Nation's 123,000 libraries and 35,000 museums. The Institute's mission is to inspire libraries and museums to advance innovation, learning and civic engagement. We provide leadership through research, policy development, and grant making. IMLS provides a variety of grant programs to assist the Nation's museums and libraries in improving their operations and enhancing their services to the public. (20 U.S.C. 9101 *et seq.*).

II. Current Actions

To administer The Role of Libraries and Museums in Community Transformation (Community Catalyst)—A National Leadership Grants Special Initiative. National Leadership Grants for Libraries (NLG-Libraries) and National Leadership Grants for Museums (NLG-Museums), under which this special initiative falls, support projects that address challenges faced by the library and museum fields and that have the potential to advance practice in those fields. Successful projects will generate results such as new tools, research findings, models, services, practices, or alliances that can be widely used, adapted, scaled, or replicated to extend the benefits of federal investment. This special joint NLG-Libraries and NLG-Museums initiative invites proposals for development and testing of approaches to deepen and sustain the collaborative work that libraries and museums engage in with their communities. Funded projects will create a foundation for enhanced collective impact in communities, especially working with those from diverse economic, social, and cultural backgrounds and will involve key partners such as community service organizations, government entities, and/or funders.

This funding opportunity may include grants and/or cooperative agreements. We will seek proposals that use approaches grounded in community innovation labs; such processes help to build understanding and develop options when complex social problems affect many stakeholders. They are effective where no one entity is accountable for solving the problem, no one solution is sufficient for solving the problem, and current solutions are insufficient. Labs draw on diverse perspectives about a problem to make sense of an issue and focus on rapid experimentation to surface and adapt solutions to problems. By bringing together stakeholders with a collective blend of knowledge and experience with various aspects of local place and social wellbeing, these individuals and organizations can co-create, and test solutions together in ways that they could not have done on their own. Participants will seek to help their local community collaborate across sectors, question old assumptions, develop deep understandings of local system dynamics, explore solutions that leverage existing community assets and yield innovative responses, and rehearse potential strategies for change that include drawing upon museums and libraries.

This process will help to advance our understanding of what is currently occurring in a community and where there are different leverage points to effect change. The desired goal is to help catalyze civic revitalization with the active involvement of key community assets, museums and libraries.

Agency: Institute of Museum and Library Services.

Title: The Role of Libraries and Museums in Community Transformation (Community Catalyst)—A National Leadership Grants Special Initiative.

OMB Number: TBD.

Agency Number: 3137.

Frequency: One time.

Affected Public: Libraries, agencies, institutions of higher education, museums, and other entities that advance the museum and library fields and that meet the eligibility criteria.

Number of Respondents: 15.

Estimated Time per Respondent: 40 hours.

Total Burden Hours: 1,480.

Total Annualized Cost to Respondents: $43,805.

Total Annualized Capital/Startup Costs: 0.

Total Annualized Cost to Federal Government: $7,608.

Public Comments Invited: Comments submitted in response to this notice will be summarized and/or included in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Stephanie Burwell, Chief Information Officer, Office of the Chief Information Officer, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW., Suite 4000, Washington, DC 20024–2135. Mrs. Burwell can be reached by Telephone: 202–653–4684, Fax: 202–653–4625, or by email at *sburwell@imls.gov* or by teletype (TTY/TDD) at 202–653–4614. Office hours are from 8:30 a.m. to 5 p.m., E.T., Monday through Friday, except Federal holidays.

Dated: November 2, 2016.

Kim A. Miller,

Grants Management Specialist, Office of the Chief Financial Officer.

[FR Doc. 2016–26894 Filed 11–7–16; 8:45 am]

BILLING CODE 7036–01–P

NATIONAL SCIENCE FOUNDATION

Astronomy and Astrophysics Advisory Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub., L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

NAME AND COMMITTEE CODE: Astronomy and Astrophysics Advisory Committee (#13883).

DATE AND TIME:
January 26, 2017; 9:00 a.m.–5:00 p.m.
January 27, 2017; 9:00 a.m.–12:00 p.m.

PLACE: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Stafford I, Room 1235.

TYPE OF MEETING: Open.

CONTACT PERSON: Dr. Christopher Davis, Program Director, Division of Astronomical Sciences, Suite 1045, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: 703–292–4910.

PURPOSE OF MEETING: To provide advice and recommendations to the National Science Foundation (NSF), the National Aeronautics and Space Administration (NASA) and the U.S. Department of Energy (DOE) on issues within the field of astronomy and astrophysics that are of mutual interest and concern to the agencies.

AGENDA: To hear presentations of current programming by representatives from NSF, NASA, DOE and other agencies relevant to astronomy and astrophysics; to discuss current and potential areas of cooperation between the agencies; to formulate recommendations for continued and new areas of cooperation and mechanisms for achieving them.

Dated: November 2, 2016.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2016–26876 Filed 11–7–16; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0226]

Biweekly Notice: Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Biweekly notice.

SUMMARY: Pursuant to Section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and

grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued, from October 8, 2016, to October 24, 2016. The last biweekly notice was published on October 25, 2016.

DATES: Comments must be filed by December 8, 2016. A request for a hearing must be filed by January 9, 2017.

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

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0226. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual or individuals in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Lynn Ronewicz, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–1927, email: *Lynn.Ronewicz@nrc.gov.*

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2016–0226, facility name, unit number(s), plant docket number, application date, and subject 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–2016–0226.
- *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 this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2016–0226, facility name, unit number(s), plant docket number, application date, and subject in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov,* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

I. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in § 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and a petition to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a petition is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic

Safety and Licensing Board Panel, will rule on the petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest. The petition must also set forth the specific contentions which the petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions consistent with the NRC's regulations, policies, and procedures.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii).

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1).

The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by January 9, 2017. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may also have the opportunity to participate under 10 CFR 2.315(c).

If a hearing is granted, any person who does not wish, or is not qualified, to become a party to the proceeding may, in the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing).

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene (hereinafter ''petition''), and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562, August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* System requirements for accessing the E-Submittal server are available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/*

adjudicatory-sub.html. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Electronic Filing Help Desk will not be able to offer assistance in using unlisted software.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a petition. Submissions should be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public Web site at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 7 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, in some instances, a petition will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

For further details with to respect these license amendment applications, see the application for amendment which is available for public inspection in ADAMS and at the NRC's PDR. For additional direction on accessing information related to this document, see the ''Obtaining Information and Submitting Comments'' section of this document.

Dominion Energy Kewaunee, Inc., Docket No. 50–305, Kewaunee Power Station (KPS), Carlton, Wisconsin

Date of amendment request: September 14, 2015. A publicly available version is in ADAMS under Accession No. ML15261A236.

Description of amendment request: The amendment would revise the Operating License and associated Technical Specifications to reflect removal of all KPS spent nuclear fuel from the spent fuel pool and its transfer to dry cask storage within an Independent Spent Fuel Storage Installation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment would modify the KPS renewed facility operating license and Technical Specification (TS) by deleting the portions of the license and TS that are no longer applicable to a facility with no spent nuclear fuel stored in the spent fuel pool, while modifying the remaining portions to correspond to all nuclear fuel stored within an Independent Spent Fuel Storage Installation (ISFSI). This amendment becomes effective upon removal of all spent nuclear fuel from the KPS spent fuel pool and its transfer to dry cask storage within an ISFSI.

The definition of safety-related structures, systems, and components (SSCs) in 10 CFR 50.2 states that safety-related SSCs are those relied on to remain functional during and following design basis events to assure:

1. The integrity of the reactor coolant boundary;

2. The capability to shutdown the reactor and maintain it in a safe shutdown condition; or

3. The capability to prevent or mitigate the consequences of accidents which could result in potential offsite exposures comparable to the applicable guideline exposures set forth in 10 CFR 50.43(a)(1) or 100.11.

The first two criteria (integrity of the reactor coolant pressure boundary and safe shutdown of the reactor) are not applicable to a plant in a permanently defueled condition. The third criterion is related to preventing or mitigating the consequences of accidents that could result in potential offsite exposures exceeding limits. However, after all nuclear spent fuel assemblies have been transferred to dry cask storage within an ISFSI, none of the SSCs at KPS are required to be relied on for accident mitigation. Therefore, none of the SSCs at KPS meet the definition of a safety-related SSC stated in 10 CFR 50.2. The proposed deletion of

requirements in the TS does not affect systems credited in any accident analysis at KPS.

Section 14 of the KPS Updated Safety Analysis Report (USAR) described the design basis accidents related to the spent fuel pool. These postulated accidents are predicated on spent fuel being stored in the spent fuel pool. With the removal of the spent fuel from the spent fuel pool, there are no remaining spent fuel assemblies to be monitored and there are no credible accidents that require the actions of a Certified Fuel Handler, Shift Manager, or a Non-certified Operator to prevent occurrence or mitigate the consequences of an accident.

The proposed changes do not have an adverse impact on the remaining decommissioning activities or any of their postulated consequences.

The proposed changes related to the relocation of certain administrative requirements do not affect operating procedures or administrative controls that have the function of preventing or mitigating any accidents applicable to the safe management of irradiated fuel or decommissioning of the facility.

Therefore, the proposed amendment does not involve a significant increase in the consequences of a previously evaluated accident.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes eliminate the operational requirements and certain design requirements associated with the storage of the spent fuel in the spent fuel pool, and relocate certain administrative controls to the Quality Assurance Program Description.

After the removal of the spent fuel from the spent fuel pool and transfer to the ISFSI, there are no spent fuel assemblies that remain in the spent fuel pool. Coupled with a prohibition against storage of fuel in the spent fuel pool, the potential for fuel related accidents is removed. The proposed changes do not introduce any new failure modes.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in the margin of safety?

Response: No.

The removal of all spent nuclear fuel from the spent fuel pool into storage in casks within an ISFSI, coupled with a prohibition against future storage of fuel within the spent fuel pool, removes the potential for fuel related accidents.

The design basis and accident assumptions within the KPS USAR and the TS relating to safe management and safety of spent fuel in the spent fuel pool are no longer applicable. The proposed changes do not affect remaining plant operations, systems, or components supporting decommissioning activities.

The requirements for systems, structures, and components (SSCs) that have been deleted from the KPS TS are not credited in the existing accident analysis for any applicable postulated accident; and as such, do not contribute to the margin of safety associated with the accident analysis.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Counsel, Dominion Resource Services, Inc., 120 Tredegar Street, RS–2, Richmond, VA 23219.

NRC Branch Chief: Bruce A. Watson.

Entergy Operations, Inc. (Entergy), Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: July 25, 2016. A publicly-available version is in ADAMS under Accession No. ML16207A532.

Description of amendment request: The amendment would revise the Waterford Steam Electric Station, Unit 3 (Waterford 3), Technical Specifications (TSs) Section 6.5.8, ''Inservice Testing Program,'' to remove requirements duplicated in the American Society of Mechanical Engineers Code for Operation and Maintenance of Nuclear Power Plants Case OMN–20, ''Inservice Test Frequency.'' A new defined term, ''Inservice Testing Program,'' will be added to the TS 1.0, ''Definitions,'' section. The licensee states that the proposed change to the TS is consistent with Technical Specifications Task Force (TSTF) Traveler TSTF–545, Revision 3, ''TS Inservice Testing Program Removal & Clarify SR Usage Rule Application to Section 5.5 Testing'' (ADAMS Accession No. ML15294A555). However, the Waterford 3 TSs (NUREG–0973) are of an older standard version and have not been converted to the Improved Standard Technical Specifications (ISTSs). Therefore, Entergy has included in the application a table of TSs affected by the amendment, with variations and differences between the Waterford 3 TSs and the ISTSs listed in TSTF–545 discussed individually.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below with NRC staff edits in square brackets:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises TS Chapter 6, ''Administrative Controls,'' Section 6.5, ''Programs'' by eliminating the ''Inservice Testing Program'' specification. Most requirements in the IST Program are removed, as they are duplicative of requirements in the ASME OM Code [American Society of Mechanical Engineers Code for Operation and Maintenance of Nuclear Power Plants], as clarified by Code Case OMN–20, ''Inservice Test Frequency.'' The remaining requirements in the Section 6.5.8, IST Program are eliminated [. . .]. A new defined term, ''Inservice Testing Program,'' is added to the TS, which references the requirements of 10 CFR 50.55a(f).

Performance of inservice testing is not an initiator to any accident previously evaluated. As a result, the probability of occurrence of an accident is not significantly affected by the proposed change. Inservice test frequencies under Code Case OMN–20 are equivalent to the current testing period allowed by the TS with the exception that testing frequencies greater than 2 years may be extended by up to 6 months to facilitate test scheduling and consideration of plant operating conditions that may not be suitable for performance of the required testing. The testing frequency extension will not affect the ability of the components to mitigate any accident previously evaluated as the components are required to be operable during the testing period extension. Performance of inservice tests utilizing the allowances in OMN–20 will not significantly affect the reliability of the tested components. As a result, the availability of the affected components, as well as their ability to mitigate the consequences of accidents previously evaluated, is not affected.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not alter the design or configuration of the plant. The proposed change does not involve a physical alteration of the plant; no new or different kind of equipment will be installed. The proposed change does not alter the types of inservice testing performed. In most cases, the frequency of inservice testing is unchanged. However, the frequency of testing would not result in a new or different kind of accident from any previously evaluated since the testing methods are not altered.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change eliminates some requirements from the TS in lieu of

requirements in the ASME Code, as modified by use of Code Case OMN–20. Compliance with the ASME Code is required by 10 CFR 50.55a. The proposed change also allows inservice tests with frequencies greater than 2 years to be extended by 6 months to facilitate test scheduling and consideration of plant operating conditions that may not be suitable for performance of the required testing. The testing frequency extension will not affect the ability of the components to respond to an accident as the components are required to be operable during the testing period extension. The proposed change will eliminate the existing TS Surveillance Requirement (SR) 4.0.3 (referenced as SR 3.0.3 in the ISTS [improved standard technical specification]) allowance to defer performance of missed inservice tests up to the duration of the specified testing frequency, and instead will require an assessment of the missed test on equipment operability. This assessment will consider the effect on a margin of safety (equipment operability). Should the component be inoperable, the Technical Specifications provide actions to ensure that the margin of safety is protected. The proposed change also eliminates a statement that nothing in the ASME Code should be construed to supersede the requirements of any TS. [. . .] However, elimination of the statement will have no effect on plant operation or safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William B. Glew, Jr., Associate General Counsel—Entergy Services, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Acting Branch Chief: Stephen S. Koenick.

Exelon Generation Company, LLC, Docket No. 50–244, R.E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: August 22, 2016. A publicly available version is in ADAMS under Accession No. ML16236A300.

Description of amendment request: The amendment would (1) revise Technical Specification (TS) 4.2.1, ''Reactor Core, Fuel Assemblies,'' to add Optimized ZIRLO™ as an approved fuel rod cladding material, (2) revise TS 5.6.5.b to add the Westinghouse topical reports for Optimized ZIRLO™ and ZIRLO®, and (3) revise TS 5.6.5.b with a non-technical change to the Reference 11 title (replace a semicolon with a period).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change would allow the use of Optimized ZIRLO™ clad nuclear fuel in the reactors. The NRC approved topical report WCAP–12610–P–A & CENPD–404–P–A, Addendum 1–A, ''Optimized ZIRLO™,'' prepared by Westinghouse Electric Company LLC (Westinghouse), addresses Optimized ZIRLO and demonstrates that Optimized ZIRLO™ has essentially the same properties as currently licensed ZIRLO®. The fuel cladding itself is not an accident initiator and does not affect accident probability. With the approved exemption, use of Optimized ZIRLO™ fuel cladding will continue to meet all 10 CFR 50.46 acceptance criteria and, therefore, will not increase the consequences of an accident.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Use of Optimized ZIRLO™ clad fuel will not result in changes in the operation or configuration of the facility. Topical Report WCAP–12610–P–A & CENPD–404–P–A, Addendum 1–A, demonstrated that the material properties of Optimized ZIRLO™ are similar to those of standard ZIRLO®. Therefore, Optimized ZIRLO™ fuel rod cladding will perform similarly to those fabricated from standard ZIRLO®, thus precluding the possibility of the fuel cladding becoming an accident initiator and causing a new or different type of accident. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change will not involve a significant reduction in the margin of safety. Topical Report WCAP–12610–P–A & CENPD–404–P–A, Addendum 1–A, demonstrated that the material properties of the Optimized ZIRLO™ are not significantly different from those of standard ZIRLO®. Optimized ZIRLO™ is expected to perform similarly to standard ZIRLO® for all normal operating and accident scenarios, including both loss of coolant accident (LOCA) and non-LOCA scenarios. For LOCA scenarios, where the slight difference is Optimized ZIRLO™ material properties relative to standard ZIRLO® could have some impact on the overall accident scenario, plant-specific LOCA analyses using Optimized ZIRLO™ properties will demonstrate that the acceptance criteria of 10 CFR 50.46 have been satisfied.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Travis L. Tate.

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2, Will County, Illinois

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Exelon Generation Company, LLC, Docket No. 50–461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–220 and 50–410, Nine Mile Point Nuclear Station, Units 1 and 2, Oswego County, New York

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York and Lancaster Counties, Pennsylvania

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Exelon Generation Company, LLC, Docket No. 50–244, R.E. Ginna Nuclear Power Plant, Wayne County, New York

Exelon Generation Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of amendment request: July 26, 2016, as supplemented by letter dated October 6, 2016. Publicly-available versions are in ADAMS under

Accession Nos. ML16209A218 and ML16280A402, respectively.

Description of amendment request: The amendments would revise the Inservice Testing Program requirements in each plant's technical specifications (TSs). For each plant, the changes include deleting the current TS for the Inservice Testing Program, adding a new defined term, ''INSERVICE TESTING PROGAM,'' to the TSs, and revising other TSs to reference this new defined term instead of the deleted TS. The licensee stated that the proposed changes are based on Technical Specifications Task Force (TSTF) Traveler TSTF–545, Revision 3, ''TS Inservice Testing Program Removal & Clarify SR Usage Rule Application to Section 5.5 Testing'' (ADAMS Accession No. ML15294A555), with some variations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's analysis is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises TS Chapter 5, ''Administrative Controls,'' Section 5.5, ''Programs and Manuals,'' or equivalent, by deleting the ''lnservice Testing Program'' specification. A new defined term, ''INSERVICE TESTING PROGRAM,'' is added to the TS, which references the requirements of 10 CFR 50.55a(f), ''Inservice testing requirements.'' The regulations in 10 CFR 50.55a(f) require that specified pumps and valves meet the inservice test requirements in the American Society of Mechanical Engineers (ASME) Code for Operation and Maintenance of Nuclear Power Plants (ASME OM Code) and addenda. Most requirements currently in the TS lnservice Testing Program are duplicative of requirements in the ASME OM Code and addenda, as modified by NRC-approved alternatives or reliefs. The proposed change primarily affects the required frequency for performing ASME OM Code required tests for pumps and valves which are covered by the Inservice Testing Program. The proposed change would allow a longer interval between some tests and require a shorter interval between other tests; the effect of the change to specific test intervals depends on the plant-specific licensing basis.

Performance of inservice testing is not an initiator to any accident previously evaluated. As a result, the probability of occurrence of an accident is not significantly affected by the proposed change. Changing the required test frequency of pumps and valves will not affect the ability of the components to mitigate any accident previously evaluated, as the components are required to be operable. If components required by the TSs are found to be inoperable, the TSs specify the actions required to ensure safe operation of the facility, and these actions are not altered by the proposed change. Performance of inservice tests in accordance with the ASME OM Code, as modified by NRC-approved alternatives or reliefs, will not significantly affect the reliability of the tested components. As a result, the availability of the affected components, as well as their ability to mitigate the consequences of accidents previously evaluated, is not significantly affected.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not alter the design or configuration of the plant. The proposed change does not involve a physical alteration of the plant; no new or different kind of equipment will be installed. The proposed change does not alter the types of inservice testing performed. Changes to the frequency of testing would not result in a new or different kind of accident from any previously evaluated since the testing methods are not altered. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change eliminates some requirements from the TSs in lieu of requirements in the ASME OM Code, as modified by NRC-approved alternatives or reliefs. Compliance with the ASME OM Code is required by 10 CFR 50.55a. Changes to the required test frequency will not affect the ability of the components to respond to an accident, as the components are required to be operable. The proposed change also eliminates a provision which allowed, under certain circumstances, the licensee to delay declaring equipment inoperable due to a missed surveillance. This change will not have a significant effect on plant operation or safety, as the licensee will still be required by TSs to assess component operability. If components required by the TSs are found to be inoperable, the TSs specify the actions required to ensure safe operation of the facility, and these actions are not altered by the proposed change. The proposed change also eliminates a statement that nothing in the ASME OM Code should be construed to supersede the requirements of any TS. Elimination of the statement will not have a significant effect on plant operation or safety. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Acting Branch Chief: G. Edward Miller.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station (CNS), Nemaha County, Nebraska

Date of amendment request: August 26, 2016. A publicly-available version is in ADAMS under Accession No. ML16245A288.

Description of amendment request: The amendment would revise the CNS Technical Specifications (TSs) to eliminate Section 5.5.6, ''Inservice Testing [IST] Program,'' to remove requirements duplicated in the American Society of Mechanical Engineers Code for Operation and Maintenance of Nuclear Power Plants (ASME OM Code) Case OMN–20, ''Inservice Test Frequency.'' A new defined term, ''Inservice Testing Program,'' will be added to TS Section 1.1, ''Definitions.'' The licensee stated that the proposed change to the TSs is consistent with Technical Specifications Task Force (TSTF) Traveler TSTF–545, Revision 3, ''TS Inservice Testing Program Removal & Clarify SR Usage Rule Application to Section 5.5 Testing'' (ADAMS Accession No. ML15294A555), with no proposed technical variations or deviations. However, in some cases, the CNS TSs use different section titles or numbering for surveillance requirements than the Standard Technical Specifications on which TSTF–545 was based, so the licensee changed the TSTF–545 numbering to be consistent with the CNS TS numbering.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below with NRC staff edits in [square brackets]:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises TS Chapter 5, ''Administrative Controls,'' Section 5.5, ''Programs and Manuals,'' by eliminating the ''Inservice Testing Program'' specification. Most requirements in the Inservice Testing Program are removed, as they are duplicative of requirements in the ASME OM Code, as clarified by Code Case OMN–20, ''Inservice Test Frequency.'' The remaining requirements in the Section 5.5 IST Program

are eliminated [. . .]. A new defined term, ''Inservice Testing Program,'' is added to the TS, which references the requirements of 10 CFR 50.55a(f).

Performance of inservice testing is not an initiator to any accident previously evaluated. As a result, the probability of occurrence of an accident is not significantly affected by the proposed change. Inservice test frequencies under Code Case OMN–20 are equivalent to the current testing period allowed by the TS with the exception that testing frequencies greater than 2 years may be extended by up to 6 months to facilitate test scheduling and consideration of plant operating conditions that may not be suitable for performance of the required testing. The testing frequency extension will not affect the ability of the components to mitigate any accident previously evaluated as the components are required to be operable during the testing period extension. Performance of inservice tests utilizing the allowances in OMN–20 will not significantly affect the reliability of the tested components. As a result, the availability of the affected components, as well as their ability to mitigate the consequences of accidents previously evaluated, is not affected.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not alter the design or configuration of the plant. The proposed change does not involve a physical alteration of the plant; no new or different kind of equipment will be installed. The proposed change does not alter the types of inservice testing performed. In most cases, the frequency of inservice testing is unchanged. However, the frequency of testing would not result in a new or different kind of accident from any previously evaluated since the testing methods are not altered.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change eliminates some requirements from the TS in lieu of requirements in the ASME Code, as modified by use of Code Case OMN–20. Compliance with the ASME Code is required by 10 CFR 50.55a. The proposed change also allows inservice tests with frequencies greater than 2 years to be extended by 6 months to facilitate test scheduling and consideration of plant operating conditions that may not be suitable for performance of the required testing. The testing frequency extension will not affect the ability of the components to respond to an accident as the components are required to be operable during the testing period extension. The proposed change will eliminate the existing TS SR 3.0.3 allowance to defer performance of missed inservice tests up to the duration of the specified testing frequency, and instead will require an assessment of the missed test on equipment operability. This assessment will consider the effect on a margin of safety (equipment operability). Should the component be inoperable, the Technical Specifications provide actions to ensure that the margin of safety is protected. The proposed change also eliminates a statement that nothing in the ASME Code should be construed to supersede the requirements of any TS. [. . .] However, elimination of the statement will have no effect on plant operation or safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John C. McClure, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

NRC Acting Branch Chief: Stephen S. Koenick.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1 (FCS), Washington County, Nebraska

Date of amendment request: September 2, 2016. A publicly-available version is in ADAMS under Accession No. ML16246A321.

Description of amendment request: The amendment would revise the Nuclear Radiological Emergency Response Plan (RERP) for FCS for the plant condition following permanent cessation of power operations and defueling. The proposed FCS RERP changes would revise the shift staffing and Emergency Response Organization (ERO) staffing.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes to the FCS RERP do not impact the function of plant structures, systems, or components (SSCs). The proposed changes do not affect accident initiators or precursors, nor does it alter design assumptions. The proposed changes do not prevent the ability of the on-shift staff and ERO to perform their intended functions to mitigate the consequences of any accident or event that will be credible in the permanently defueled condition. The proposed changes only remove positions that will no longer be credited in the FCS RERP.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes reduce the number of on-shift and ERO positions commensurate with the hazards associated with a permanently shut down and defueled facility. The proposed changes do not involve installation of new equipment or modification of existing equipment, so that no new equipment failure modes are introduced. Also, the proposed changes do not result in a change to the way that the equipment or facility is operated so that no new accident initiators are created.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is associated with confidence in the ability of the fission product barriers (*i.e.,* fuel cladding, reactor coolant system pressure boundary, and containment structure) to limit the level of radiation dose to the public. The proposed changes are associated with the FCS RERP staffing and do not impact operation of the plant or its response to transients or accidents. The change does not affect the Technical Specifications. The proposed changes do not involve a change in the method of plant operation, and no accident analyses will be affected by the proposed changes. Safety analysis acceptance criteria are not affected by the proposed changes. The revised FCS RRP will continue to provide the necessary response staff with the proposed changes.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David A. Repka, Esq., Winston & Strawn, 1700 K Street NW., Washington, DC 20006–3817.

NRC Acting Branch Chief: Stephen S. Koenick.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: September 28, 2016. A publicly-

available version is in ADAMS under Accession No. ML16273A502.

Description of amendment request: The amendment would modify the Technical Specifications to make administrative changes to align staffing for decommissioning Fort Calhoun Station, Unit No. 1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes only impact administrative requirements associated with staff qualification, staff titles, personnel staffing levels, and clarification of systems used during decommissioning. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because: (1) The proposed amendment does not represent a change to any system design, (2) the proposed amendment does not alter, degrade, or prevent action described or assumed in any accident in the USAR [updated safety analysis report] from being performed, (3) the proposed amendment does not alter any assumptions previously made in evaluating radiological consequences, and [(4)] the proposed amendment does not affect the integrity of any fission product barrier. No safety related equipment is affected by the proposed change.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not alter the physical design, safety limits, or safety analysis assumptions associated with the operation of the plant. Hence, the proposed changes do not introduce any new accident initiators, nor do these changes reduce or adversely affect the capabilities of any plant structure or system in the performance of their safety function.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not alter the manner in which safety limits or limiting safety system settings are determined. The safety analysis acceptance criteria are not affected by these proposed changes. Further, the proposed changes do not change the design function of any equipment assumed to operate in the event of an accident.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David A. Repka, Esq., Winston & Strawn, 1700 K Street NW., Washington, DC 20006–3817.

NRC Acting Branch Chief: Stephen S. Koenick.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: August 30, 2016. A publicly-available version is in ADAMS under Accession No. ML16243A233.

Description of amendment request: The amendments would revise the Salem Generating Station, Unit Nos. 1 and 2 (Salem), Technical Specifications (TSs), Section 6.8.4.j, ''Inservice Testing Program,'' to remove requirements duplicated in the American Society of Mechanical Engineers (ASME) Code for Operation and Maintenance of Nuclear Power Plants (OM Code) Case OMN–20, ''Inservice Test Frequency.'' A new defined term, ''Inservice Testing Program,'' will be added to the TS 1.0, ''Definitions,'' section. The licensee stated that the proposed change to the TS is consistent with Technical Specifications Task Force (TSTF) Traveler TSTF–545, Revision 3, ''TS Inservice Testing Program Removal & Clarify SR Usage Rule Application to Section 5.5 Testing'' (ADAMS Accession No. ML15294A555). However, the Salem TSs use different numbering than the Standard Technical Specifications on which TSTF–545 was based, so the licensee changed the TSTF–545 numbering to be consistent with the Salem TS numbering.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below with NRC staff edits in square brackets:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises TS Chapter 6, ''Administrative Controls,'' Section 6.8, ''Procedures and Programs,'' by eliminating the ''Inservice Testing Program'' specification. Most requirements in the Inservice Testing Program are removed, as they are duplicative of requirements in the ASME OM Code, as clarified by Code Case OMN–20, ''Inservice Test Frequency.'' The remaining requirements in the Section 6.8 IST [Inservice Testing] Program are eliminated [. . .]. A new defined term, ''Inservice Testing Program,'' is added to the TS, which references the requirements of 10 CFR 50.55a(f).

Performance of inservice testing is not an initiator to any accident previously evaluated. As a result, the probability of occurrence of an accident is not significantly affected by the proposed change. Inservice test frequencies under Code Case OMN–20 are equivalent to the current testing period allowed by the TS with the exception that testing frequencies greater than 2 years may be extended by up to 6 months to facilitate test scheduling and consideration of plant operating conditions that may not be suitable for performance of the required testing. The testing frequency extension will not affect the ability of the components to mitigate any accident previously evaluated as the components are required to be operable during the testing period extension. Performance of inservice tests utilizing the allowances in OMN–20 will not significantly affect the reliability of the tested components. As a result, the availability of the affected components, as well as their ability to mitigate the consequences of accidents previously evaluated, is not affected.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not alter the design or configuration of the plant. The proposed change does not involve a physical alteration of the plant; no new or different kind of equipment will be installed. The proposed change does not alter the types of inservice testing performed. In most cases, the frequency of inservice testing is unchanged. However, the frequency of testing would not result in a new or different kind of accident from any previously evaluated since the testing methods are not altered.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change eliminates some requirements from the TS in lieu of requirements in the ASME Code, as modified by use of Code Case OMN–20. Compliance with the ASME Code is required by 10 CFR 50.55a. The proposed change also allows inservice tests with frequencies greater than 2 years to be extended by 6 months to facilitate test scheduling and consideration of plant operating conditions that may not be

suitable for performance of the required testing. The testing frequency extension will not affect the ability of the components to respond to an accident as the components are required to be operable during the testing period extension. The proposed change will eliminate the existing TS 4.0.3 allowance to defer performance of missed inservice tests up to the duration of the specified testing frequency, and instead will require an assessment of the missed test on equipment operability. This assessment will consider the effect on a margin of safety (equipment operability). Should the component be inoperable, the TS provide actions to ensure that the margin of safety is protected. The proposed change also eliminates a statement that nothing in the ASME Code should be construed to supersede the requirements of any TS. [. . .] However, elimination of the statement will have no effect on plant operation or safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, PSEG Nuclear LLC–N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Branch Chief: Douglas A. Broaddus.

South Carolina Electric & Gas Company and South Carolina Public Service Authority, Docket Nos. 52–027 and 52–028, Virgil C. Summer Nuclear Station, Units 2 and 3, Fairfield, South Carolina

Date of amendment request: September 22, 2016. A publicly-available version is in ADAMS under Accession No. ML16270A582.

Description of amendment request: The changes would amend Combined License Nos. NPF–93 and NPF–94 for the Virgil C. Summer Nuclear Station, Units 2 and 3, respectively. The amendments propose changes to the Updated Final Safety Analysis Report (UFSAR) in the form of departures from the incorporated plant-specific Design Control Document Tier 2 information and involve related changes to the Combined Operating License Appendix C (and corresponding plant-specific design control document Tier 1) information. Specifically, the proposed departures consist of changes to the design reliability assurance program (D–RAP) to identify the covers for the in-containment refueling water storage tank vents and overflow weirs as the risk-significant components included in the D–RAP and to differentiate between the rod drive motor-generator (MG) sets field control relays and the rod drive power supply control cabinets in which the relays are located.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The in-containment refueling water storage tank (IRWST) provides flooding of the refueling cavity for normal refueling. The tank also serves as a heat sink during Passive Residual Heat Removal (PRHR) Heat Exchanger (HX) operation and in the event of a loss-of-coolant-accident (LOCA) provides injection in support of long-term RCS cooling. This activity adds normally closed covers to the IRWST vents and overflow weirs to prevent debris from entering the tank, prevent over-pressurization and accommodate volume and mass increases in the tank. The vent and overflow weir covers open upon differential pressures between the IRWST and containment.

The rod drive MG sets provide the power to the control rod drive mechanisms through the reactor trip switchgear. This activity revises the equipment description and equipment tag associated with the risk-significant control relays which open to de-energize the rod drive MG sets and permit rods to drop.

The proposed changes to add the IRWST vent and overflow weir covers and to change the description of the equipment and equipment tag related to the rod drive MG sets does not inhibit the SSCs from performing their safety-related function. The design bases of the IRWST vents and overflow weirs are not modified as a result of the addition of the covers to the vents and overflow weirs and the change to the control cabinet relay description and equipment tag. This proposed amendment does not have an adverse impact on the response to anticipated transients or postulated accident conditions because the functions of the SSCs are not changed. Required IRWST venting is not affected for any accident conditions. Required DAS functions are not affected for any accident conditions. Safety-related structure, system, component (SSC) or function is not adversely affected by this change. The changes to include the IRWST covers and to change the control cabinet relay description and tag number do not involve an interface with any SSC accident initiator or initiating sequence of events, and thus, the probabilities of the accidents evaluated in the UFSAR are not affected. The proposed changes do not involve a change to the predicted radiological releases due to postulated accident conditions, thus, the consequences of the accidents evaluated in the UFSAR are not affected. Probabilistic Risk Assessment (PRA) modeling and analyses associated with the SSCs are not impacted by this change.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes to the design of the IRWST vent and overflow weir covers do not adversely affect any safety-related equipment, and do not add any new interfaces to safety-related SSCs. No system or design function or equipment qualification is affected by these changes. The changes do not introduce a new failure mode, malfunction or sequence of events that could affect plant safety or safety-related equipment as the simplistic design of the cover louvers and hinged flappers are not considered unique designs. No new credible failure modes are introduced by the addition of the covers.

The proposed changes to the description and equipment tag associated with the risk-significant control relays for the rod drive MG sets do not adversely affect any safety-related equipment, and do not add any new interfaces to safety-related SSCs. No system or design function or equipment qualification is affected by these changes. The changes do not introduce a new failure mode, malfunction or sequence of events that could affect plant safety or safety-related equipment because the design function of the control relays, control cabinets, or rod drive MG sets is not changed.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes maintain compliance with the applicable Codes and Standards, thereby maintaining the margin of safety associated with these SSCs. The proposed changes do not alter any applicable design codes, code compliance, design function, or safety analysis. Consequently, no safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the proposed change, thus the margin of safety is not reduced. Because no safety analysis or design basis acceptance limit/criterion is challenged or exceeded by these changes, no margin of safety is reduced.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Kathryn M. Sutton, Morgan, Lewis & Bockius, LLC, 1111 Pennsylvania Avenue NW., Washington, DC 20004–2514.

NRC Branch Chief: Michael T. Markley.

Tennessee Valley Authority, Docket Nos. 50–390 and 50–391, Watts Bar Nuclear Plant (WBN), Units 1 and 2, Rhea County, Tennessee

Date of amendment request: September 23, 2016. A publicly-available version is in ADAMS under Accession No. ML16271A378.

Description of amendment request: The amendments would revise the completion date for License Condition 2.C(9)b for Unit 1, and License Condition 2.C(3) for Unit 2, regarding the date for completion of permanent modifications to the Fort Loudoun Dam to prevent overtopping due to the probable maximum flood. The change is needed to accommodate the current Tennessee Department of Transportation schedule for completion of highway construction that will facilitate access to complete the modifications to the Fort Loudoun Dam.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes to revise the completion date for License Condition 2.C(9)b for WBN Unit 1 and License Condition 2.C(3) for WBN Unit 2 regarding the completion of permanent modifications to the Fort Loudoun Dam from February 1, 2017, to June 30, 2018, do not affect the structures, systems, or components (SSCs) of the plant, affect plant operations, or any design function or an analysis that verifies the capability of an SSC to perform a design function. No change is being made to any of the previously evaluated accidents in the WBN Updated Final Safety Analysis Report (UFSAR).

The proposed changes do not (1) require physical changes to plant SSCs; (2) prevent the safety function of any safety-related system, structure, or component during a design basis event; (3) alter, degrade, or prevent action described or assumed in any accident described in the WBN UFSAR from being performed because the safety-related SSCs are not modified; (4) alter any assumptions previously made in evaluating radiological consequences; or (5) affect the integrity of any fission product barrier.

Therefore, the proposed change does not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not introduce any new accident causal mechanisms, because no physical changes are being made to the plant, nor do they affect any plant systems that are potential accident initiators.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The margin of safety associated with the acceptance criteria of any accident is unchanged. The proposed changes will have no effect on the availability, operability, or performance of safety-related systems and components.

The proposed change will not adversely affect the operation of plant equipment or the function of equipment assumed in the accident analysis.

The proposed amendment does not involve changes to any safety analyses assumptions, safety limits, or limiting safety system settings. The changes do not adversely affect plant-operating margins or the reliability of equipment credited in the safety analyses.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Sherry A. Quirk, Executive Vice President and General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, 6A Tower West, Knoxville, TN 37902.

NRC Acting Branch Chief: Jeanne A. Dion.

II. Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Florida Power & Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Nuclear Generating Unit Nos. 3 and 4, Miami-Dade County, Florida

Date of amendment request: August 3, 2016, as supplemented by letter dated October 4, 2016. Publicly available versions are in ADAMS under Accession Nos. ML16230A003 and ML16291A495, respectively.

Description of amendment request: The amendments would revise the Technical Specification (TS) requirements for the Control Room Emergency Ventilation System (CREVS). The licensee proposed the changes to align the CREVS TSs more closely with the applicable Standard Technical Specifications. Consequently, the requirements to immediately suspend irradiated fuel movement would be relocated, in most cases, to coincide with the commencement of unit shutdown in the event the allowable outage time (AOT) cannot be met for an inoperable CREVS component or control room envelope (CRE) boundary. The proposed amendments would also eliminate the TS Limiting Condition for Operation Actions and Surveillance Requirements associated with the CREVS kitchen and lavatory ventilation exhaust duct isolation dampers.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Relocating the requirement to immediately suspend irradiated fuel movement from the determination of inoperability to the expiration of the AOT is consistent with the Westinghouse Standard Technical Specifications (STS) for an inoperable CREVS train and thereby establishes a commensurate level of safety. This change does not impact the functioning of the fuel handling system and so does not significantly increase the probability of a fuel handling accident. The removal of the kitchen and lavatory area exhaust damper requirements aligns the licensing basis with the current design and enhances the reliability of the CRE. The CREVS is not an initiator of an accident. Hence, neither of the proposed changes increase the probability of an accident previously evaluated.

The proposed changes do not impair the CREVS' capability to provide a protected environment from which operators can control the Units for all postulated events in the presence of a single failure. For an inoperable CRE boundary in any plant MODE, the suspension of fuel movement for

the first 24 hours, during which the effectiveness of the mitigating actions are verified, ensures no increase in the consequences of a fuel handling accident. The proposed change aligns the licensing bases for the kitchen and lavatory ventilation exhaust pathways with a more reliable physical barrier design.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Relocating the requirement to immediately suspend irradiated fuel movement until expiration of the AOT is consistent with the Westinghouse STS and hence does not introduce a new type of accident than previously evaluated or change the methods governing normal plant operation. Aligning the Control Room kitchen and lavatory ventilation exhaust pathway licensing bases with their current design does not introduce new failure modes for existing equipment or result in any new limiting single failure modes. The proposed changes do not challenge the performance or integrity of any safety-related system.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes align the current CREVS TS ACTION(s) with the Westinghouse STS and the licensing bases for the Control Room kitchen and lavatory ventilation exhaust pathways with their current design. As such, the proposed changes do not involve changes to any safety analyses assumptions, safety limits, or limiting safety system settings nor do they adversely impact plant operating margins or the reliability of equipment credited in the safety analyses.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William S. Blair, Managing Attorney—Nuclear, Florida Power & Light Company, 700 Universe Blvd., MS LAW/JB, Juno Beach, FL 33408–0420.

NRC Acting Branch Chief: Jeanne A. Dion.

III. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation, and/or Environmental Assessment, as indicated. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

Duke Energy Florida, Inc. (DEF), et al., Docket No. 50–302, Crystal River Unit 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: September 22, 2015.

Brief description of amendment: The amendment approved the proposed name change from Duke Energy Florida, Inc. to Duke Energy Florida, LLC.

Date of issuance: October 12, 2016.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 250.

Facility Operating License No. DPR–72: The amendment revised the facility operating license.

*Date of initial notice in **Federal Register**:* August 16, 2016 (81 FR 54614).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 12, 2016.

No significant hazards consideration comments received: No.

Duke Energy Progress, LLC, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Hartsville, South Carolina

Date of amendment request: November 19, 2015, as supplemented by letter dated August 18, 2016.

Brief description of amendment: The amendment revised the technical specifications (TSs) to allow the extension of the Type A containment test interval to 15 years and the extension of the Type B and Type C test intervals for selected components to 120 months and 75 months, respectively. The amendment also deleted from the TSs an already implemented one-time extension of the Type A test frequency.

Date of issuance: October 11, 2016.

Effective date: As of the date of issuance and shall be implemented within 120 days of issuance.

Amendment No.: 247. A publicly-available version is in ADAMS under Accession No. ML16201A195; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–23: Amendment revised the Renewed Facility Operating License and TSs.

*Date of initial notice in **Federal Register**:* March 15, 2016 (81 FR 13841). The supplemental letter dated August 18, 2016, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 11, 2016.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Units 1 and 2 (CCNPP 1 and 2), Calvert County, Maryland

Date of amendment request: February 4, 2016.

Brief description of amendments: The amendments revised the CCNPP 1 and 2 Technical Specifications (TSs) to include Surveillance Requirement (SR) 3.5.2.10 in the list of applicable surveillances of SR 3.5.3.1 as part of the implementation of Technical Specifications Task Force (TSTF) Improved Standard Technical Specifications Change Traveler TSTF–523, Revision 2, ''Generic Letter 2008–01, Managing Gas Accumulation.''

Date of issuance: October 7, 2016.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: 319 (Unit 1) and 297 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML16263A001; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the Renewed Facility Operating Licenses and TSs.

*Date of initial notice in **Federal Register**:* May 24, 2016 (81 FR 32806).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 7, 2016.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York and Lancaster Counties, Pennsylvania

Date of amendment request: June 20, 2016, as supplemented by letter dated August 11, 2016.

Brief description of amendments: The amendments revised Technical Specification 3.8.3, ''Diesel Fuel Oil, Lube Oil, and Starting Air,'' to replace the required stored inventory of lube oil for the diesel generators (specified in number of gallons) with inventory requirements based on diesel generator operating time (specified in number of days). The changes are based on Revision 1 to Technical Specifications Task Force (TSTF) Improved Standard Technical Specifications Change Traveler TSTF–501, ''Relocate Stored Fuel Oil and Lube Oil Volume Values to Licensee Control.''

Date of issuance: October 14, 2016.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: 310 (Unit 2) and 314 (Unit 3). A publicly-available version is in ADAMS under Accession No. ML16235A405; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–44 and DPR–56: The amendments revised the Renewed Facility Operating Licenses and Technical Specifications.

*Date of initial notice in **Federal Register**:* July 19, 2016 (81 FR 46962). The supplemental letter dated August 11, 2016, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 14, 2016.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station (DNPS), Unit Nos. 2 and 3, Grundy County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station (QCNPS), Unit Nos. 1 and 2, Rock Island County, Illinois

Date of amendment request: February 6, 2015, as supplemented by letters dated September 1, 2015, and January 20, January 28, April 26, June 22, and September 28, 2016.

Brief description of amendments: The amendments revised the technical specifications (TSs) for both DNPS, Units Nos. 2 and 3, and QCNPS, Unit Nos. 1 and 2, to support the use of AREVA nuclear fuel; both facilities currently operate using a Westinghouse nuclear fuel design. Specifically, the TSs for the core operating limits report (TS 5.6.5.b) are revised to include NRC-approved AREVA methodologies and to delete methodologies no longer in use. The transient analyses take credit for conservatism in the scram speed performance; therefore, a new surveillance requirement (SR) associated with linear heat generation rate (LHGR) is added to the TSs (SR 3.2.3.2). This demonstrates scram speed distribution is consistent with that used in the transient analyses. The TSs associated with the limiting condition for operation (LCO 3.7.7) for the main turbine bypass system is revised to include requirements to use the minimum critical power ratio limits (LCO 3.2.2) and LHGR limits (LCO 3.2.3) during operations when at greater than or equal to (≥) 25 percent of rated thermal power and the main turbine bypass system is inoperable.

To increase the margin to the maximum reactor pressure vessel (RPV) acceptance criteria for certain anticipated transient without scram (ATWS) transients, the SRs for the allowable value (AV) for the ATWS recirculation pump trip (ATWS–RPT) on high RPV steam dome pressure are modified (SR 3.3.4.1.4.b). The ATWS–RPT AV for DNPS, Unit Nos. 2 and 3, is lowered to less than or equal to 1,198 pounds per square inch gauge (psig). The ATWS–RPT AV for QCNPS, Unit Nos. 1 and 2, is lowered to less than or equal to 1,195 psig.

Date of issuance: October 20, 2016.

Effective date: As of the date of issuance and shall be implemented prior to entering into MODE 2 on the first plant startup following the next refueling outage for each unit.

Amendment Nos.: 251 and 244 (DNPS, Unit Nos. 2 and 3) and 264 and 259 (GCNPS, Unit Nos. 1 and 2). A publicly-available version is in ADAMS under Accession No. ML16221A061; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–19, DPR–25, DPR–29, and DPR–30: Amendments revised the Renewed Facility Operating Licenses and TSs.

*Date of initial notice in **Federal Register**:* November 3, 2015 (80 FR 67800). The supplemental letters dated January 20, January 28, April 26, June 22, and September 28, 2016, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety evaluation dated October 20, 2016.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: December 14, 2015, as supplemented by letters dated March 9, 2016, and June 1, 2016. Publicly-available versions are in ADAMS under Accession Nos. ML15348A396, ML16069A217, and ML16153A084, respectively.

Brief description of amendments: The amendments revised the design bases in

the updated final safety analysis report to reflect the use of a new criticality safety assessment for fuel channel bow/bulge methodology to support the performance of criticality safety evaluation for ATRIUM–10XM fuel design in the spent fuel pool.

Date of issuance: October 17, 2016.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 263 (Unit 1) and 258 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML16231A131; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–29 and DPR–30: The amendments revised the Facility Operating Licenses.

*Date of initial notice in **Federal Register**:* May 3, 2016 (81 FR 26586). The March 9, 2016, supplement corrected a deficiency in the Holtec affidavit in the original submittal and did not change the NRC staff's initial proposed finding of no significant hazards consideration. The June 1, 2016, supplement contained clarifying information and did not change the NRC staff's initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 17, 2016.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant (CNP), Units 1 and 2, Berrien County, Michigan

Date of amendment request: November 14, 2014, as supplemented by letters dated February 12, July 17, August 24, August 28, November 16, and December 17, 2015, and February 19, May 6, July 12, and September 15, 2016.

Brief description of amendments: The amendments revised the CNP, Units 1 and 2, Technical Specifications (TSs) by replacing the limit on reactor coolant system (RCS) gross specific activity with a new limit on RCS noble gas specific activity. The noble gas specific activity limit is based on a new DOSE EQUIVALENT Xenon (Xe)-133 definition that replaces the E Bar average disintegration energy definition. In addition, the DOSE EQUIVALENT Iodine (I)-131 definition is revised to allow the use of additional thyroid dose conversion factors. The changes are consistent with NRC-approved industry Technical Specifications Task Force (TSTF) Standard Technical Specification change traveler, TSTF–490, Revision 0, ''Deletion of E-Bar Definition and Revision to Reactor Coolant System Specific Activity Technical Specification,'' with approved deviations. Additionally, the amendments revised the CNP, Units 1 and 2, licensing basis and TSs to adopt the alternative source term as allowed in 10 CFR 50.67.

Date of issuance: October 20, 2016.

Effective date: As of the date of issuance and shall be implemented within 180 days of issuance.

Amendment Nos.: 332 for Unit 1 and 314 for Unit 2. A publicly-available version is in ADAMS under Accession No. ML16242A111; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Renewed Facility Operating Licenses and TSs.

*Date of initial notice in **Federal Register:*** March 31, 2015 (80 FR 17091). The supplemental letters dated July 17, August 24, August 28, November 16, and December 17, 2015, and February 19, May 6, July 12, and September 15, 2016, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 20, 2016.

No significant hazards consideration comments received: No.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station (CNS), Nemaha County, Nebraska

Date of amendment request: April 21, 2016, as supplemented by letter dated August 29, 2016.

Brief description of amendment: The amendment revised Section 2.0, ''Safety Limits (SLs),'' of the CNS Technical Specifications by revising the two recirculation loop and single recirculation loop safety limit minimum critical power ratio values to reflect the results of a cycle-specific calculation.

Date of issuance: October 17, 2016.

Effective date: As of the date of issuance and shall be implemented prior to startup from Refuel Outage 29.

Amendment No.: 257. A publicly-available version is in ADAMS under Accession No. ML16272A137; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–46: The amendment revised the Renewed Facility Operating License and Technical Specifications.

*Date of initial notice in **Federal Register:*** July 5, 2016 (81 FR 43664). The supplemental letter dated August 29, 2016, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 17, 2016.

No significant hazards consideration comments received: No.

NextEra Energy Duane Arnold, LLC, Docket No. 50–331, Duane Arnold Energy Center (DAEC), Linn County, Iowa

Date of amendment request: October 14, 2015. A publicly-available version is in ADAMS under Accession No. ML15289A233.

Brief description of amendment: The amendment revised the DAEC Technical Specifications Section 5.5.6, ''Inservice Testing Program,'' to provide consistency with the requirements of 10 CFR 50.55a(f)(4) for inservice testing of pumps and valves and remove requirements that are redundant to the requirements of 10 CFR 50.55a.

Date of issuance: October 17, 2016.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 298. A publicly-available version is in ADAMS under Accession No. ML16263A245; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–49: The amendment revised the Renewed Facility Operating License and Technical Specifications.

*Date of initial notice in **Federal Register:*** December 22, 2015 (80 FR 79621).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 17, 2016.

No significant hazards consideration comments received: No.

Northern States Power Company—Minnesota, Docket No. 50–282, Prairie Island Nuclear Generating Plant, Unit 1, Goodhue County, Minnesota

Date of amendment request: April 7, 2016.

Brief description of amendment: The amendment revised Technical Specification (TS) Surveillance Requirement (SR) 3.8.4.3 to allow a one-time extension of 1 month for the TS SR frequency.

Date of issuance: October 13, 2016.

Effective date: As of the date of issuance and shall be implemented within 7 days of issuance.

Amendment No.: 218. A publicly-available version is in ADAMS under Accession No. ML16256A514; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Operating License No. DPR–42: Amendment revised the Facility Operating License and TSs.

Date of initial notice in ***Federal Register:*** June 21, 2016 (81 FR 40360).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 13, 2016.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station (HCGS), Salem County, New Jersey

Date of amendment request: June 8, 2016.

Brief description of amendment: The amendment revised the HCGS Technical Specifications. Specifically, the safety limit minimum critical power ratio for single recirculation loop operation is revised. The change results from a cycle-specific analysis performed to support the operation of HCGS in upcoming Cycle 21.

Date of issuance: October 13, 2016.

Effective date: As of the date of issuance and shall be implemented prior to startup from the fall 2016 refueling outage.

Amendment No.: 200. A publicly-available version is in ADAMS under Accession No. ML16270A038; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. NPF–57: The amendment revised the Renewed Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** August 2, 2016 (81 FR 50748).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 13, 2016.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendment request: April 25, 2016.

Brief description of amendments: The amendments updated Attachment M, ''License Condition Changes''; Attachment S, ''Modification and Implementation Items''; and Attachment W, ''Fire Probabilistic Risk Analysis Insights,'' of the previously approved National Fire Protection Association (NFPA) 805 amendment.

Date of issuance: October 17, 2016.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: 205 (Unit 1) and 201 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML16232A000; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. NPF–2 and NPF–8: The amendments revised the Renewed Facility Operating Licenses.

Date of initial notice in ***Federal Register:*** June 7, 2016 (81 FR 36623).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 17, 2016.

No significant hazards consideration comments received: No.

South Carolina Electric & Gas Company and South Carolina Public Service Authority, Docket Nos. 52–027 and 52–028, Virgil C. Summer Nuclear Station (VCSNS), Units 2 and 3, Fairfield County, South Carolina

Date of amendment request: January 19, 2016, as supplemented by letter dated March 1, 2016.

Description of amendment: The amendments authorized changes to the VCSNS, Units 2 and 3, Updated Final Safety Analysis Report in the form of departures from the incorporated plant-specific Design Control Document Tier 2* information. The changes are related to changes to construction methods and construction sequence used for the composite floors and roof of the auxiliary building.

Date of issuance: August 25, 2016.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment Nos.: 51 (for Units 2 and 3). A publicly-available version is in ADAMS under Package Accession No. ML16202A279; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Facility Combined Licenses No. NPF–91 and NPF–92: Amendments revised the Facility Combined Licenses.

Date of initial notice in ***Federal Register:*** March 15, 2016 (81 FR 13837). The supplemental letter dated March 1, 2016, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register.**

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 25, 2016.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Unit Nos. 1 and 2, Louisa County, Virginia

Date of amendment request: December 10, 2016, as supplemented by letter dated June 15, 2016.

Brief description of amendments: The amendments modified Technical Specification (TS) 3.2.1, ''Heat Flux Hot Channel Factor ($F_Q(Z)$).'' The amendments relocate required operating space reductions to the Core Operating Limits Report, accompanied by verification for each reload cycle, and define TS surveillance requirements for steady-state and transient $F_Q(Z)$ and corresponding actions with which to apply an appropriate penalty factor to measured results, as identified in Westinghouse Nuclear Safety Advisory Letter (NSAL)–09–5, Revision 1, ''Relaxed Axial Offset Control FQ Technical Specification Actions,'' and NSAL–15–1, Revision 0, ''Heat Flux Hot Channel Factor Surveillance Requirements,'' respectively.

Date of issuance: October 17, 2016.

Effective date: As of the date of issuance and shall be implemented before September 30, 2017.

Amendment Nos.: 278 (Unit No. 1) and 261 (Unit No. 2). A publicly available version is in ADAMS under Accession No. ML16252A478; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. NPF–4 and NPF–7: Amendments revised the Renewed Facility Operating Licenses and TSs.

Date of initial notice in ***Federal Register:*** March 1, 2016 (81 FR 10682).

The supplemental letter dated June 15, 2016, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 17, 2016.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 27th day of October, 2016.

For the Nuclear Regulatory Commission.

Anne T. Boland,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2016–26824 Filed 11–7–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–029 and 52–030; NRC–2008–0558]

Duke Energy Florida, LLC; Levy Nuclear Plant Units 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Combined licenses and record of decision; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued combined license numbers NPF–99 and NPF–100 to Duke Energy Florida, LLC (DEF) for Levy Nuclear Plant Units 1 and 2 (LNP Units 1 and 2). In addition, the NRC has prepared a Summary Record of Decision (ROD) that supports the NRC's decision to issue combined license numbers NPF–99 and NPF–100.

DATES: Combined license numbers NPF–99 and NPF–100 became effective on October 26, 2016.

ADDRESSES: Please refer to Docket ID NRC–2008–0558 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0558. 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 PublicDocuments*'' 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 a document is referenced. For the convenience of the reader, the ADAMS accession numbers are provided in a table in the ''Availability of Documents'' section of this document.
- *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: Donald Habib, telephone: 301- 415–1035, email: *Donald.Habib@nrc.gov* regarding safety matters; or Mallecia Sutton, telephone: 301–415–0673, email: *Mallecia.Sutton@nrc.gov* regarding environmental matters. Both are staff members of the Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Introduction

Under section 2.106 of title 10 of the *Code of Federal Regulations* (10 CFR), the NRC is providing notice of the issuance of combined license numbers NPF–99 and NPF–100 to the licensee, and under § 50.102(c), the NRC is providing notice of the ROD. With respect to the application for combined licenses filed by DEF, the NRC finds that the applicable standards and requirements of the Atomic Energy Act of 1954, as amended, (AEA) and the Commission's regulations have been met. The NRC finds that any required notifications to other agencies or bodies have been duly made and that there is reasonable assurance that the facilities will be constructed and will operate in conformity with the license, the provisions of the AEA, and the Commission's regulations. Furthermore, the NRC finds that the licensees are technically and financially qualified to engage in the activities authorized, and that issuance of the licenses will not be inimical to the common defense and security or to the health and safety of the public. Finally, the NRC finds that the findings required by subpart A of 10 CFR part 51 have been made.

Accordingly, the combined licenses were issued on October 26, 2016, and became effective immediately.

II. Further Information

The NRC has prepared a Final Safety Evaluation Report (FSER) and Final Environmental Impact Statement (FEIS) that document the information reviewed and the NRC's conclusion. The Commission has also issued its Memorandum and Order documenting its final decision on the uncontested hearing held on July 28, 2016, which serves as the ROD in this proceeding. The NRC also prepared a document summarizing the ROD to accompany its actions on the combined license application; this Summary ROD incorporates by reference materials contained in the FEIS. The FSER, FEIS, Summary ROD, and accompanying documentation included in the combined license package, as well as the Commission's hearing decision and ROD, are available online in the ADAMS Public Document collection at *http://www.nrc.gov/reading-rm/adams.html.* From this site, persons can access the NRC's ADAMS Library, which provides text and image files of NRC's public documents.

The ADAMS accession numbers for the documents related to this notice are listed below.

III. Availability of Documents

The documents identified in the following table are available to interested persons through the ADAMS Public Documents collection. A copy of the combined license application is also available for public inspection at the NRC's PDR and at *http://www.nrc.gov/reactors/new-reactors/col.html.*

Document	Adams Accession No.
Final Safety Evaluation Report for Combined Licenses for LNP Units 1 and 2	ML16084A664
Final Environmental Impact Statement for Combined Licenses for LNP Units 1 and 2	ML12100A063 (Volume 1) ML12100A068 (Volume 2) ML12100A070 (Volume 3)
Commission's Memorandum and Order on the uncontested hearing (Record of Decision)	ML16294A141
Summary Record of Decision	ML16272A416
Letter transmitting Combined Licenses Nos. NPF-99 and NPF-100 and accompanying documentation	ML16176A200
Combined Licenses Nos. NPF-99 and NPF-100	ML12265A029 (Unit 1) ML12265A042 (Unit 2)
Levy Nuclear Plant Units 1 and 2 , Combined License Application, Revision 9, April 6, 2016	ML16111A960

Dated at Rockville, Maryland, this 2nd day of November 2016.

For the Nuclear Regulatory Commission.

Francis M. Akstulewicz,

Director, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2016–26946 Filed 11–7–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–182; NRC–2011–0186]

Purdue University; Purdue University Research Reactor

AGENCY: Nuclear Regulatory Commission.

ACTION: License renewal; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) issued a renewal of Facility Operating License No. R–87, held by the Purdue University (the licensee) for the continued operation of its Purdue University Research Reactor (PUR–1 or the reactor) for an additional 20 years.

DATES: The operating license renewal for Facility Operating License No. R–87 is effective on October 31, 2016.

ADDRESSES: Please refer to Docket ID NRC–2011–0186 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–2011–0186. 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.* For the convenience of the reader, the ADAMS accession numbers are provided in a table in the ''Availability of Documents'' section of this document.
- *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: Cindy K. Montgomery, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3398; email: *Cindy.Montgomery@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Discussion

The NRC has issued renewed Facility Operating License No. R–87, held by the licensee, which authorizes continued operation of the Purdue University Research Reactor, located on the campus of Purdue University, in the city of West Lafayette, Tippecanoe County, Indiana. The PUR–1 is a heterogeneous pool-type, nuclear research reactor that uses Materials Testing Reactor plate type fuel. The PUR–1 is licensed to operate at a steady-state power level of 12 kilowatts thermal (kW(t)). The renewed Facility Operating License No. R–87 will expire 20 years from its date of issuance.

The renewed facility operating license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in chapter I of title 10 of the *Code of Federal Regulations* (10 CFR), and sets forth those findings in the renewed facility operating license. The NRC afforded an opportunity for hearing in the Notice of Opportunity for Hearing published in the **Federal Register** on November 3, 2011 (76 FR 68225). The NRC received no request for a hearing or petition for leave to intervene following the notice.

The NRC staff prepared a safety evaluation report for the renewal of Facility Operating License No. R–87 and concluded, based on that evaluation, that the licensee can continue to operate the facility without endangering the health and safety of the public. The NRC staff also prepared an environmental asessment and finding of no significant impact for the renewal of the facility operating license, noticed in the **Federal Register** on October 27, 2016 (81 FR 74822), and concluded that renewal of the facility operating license will not have a significant impact on the quality of the human environment.

II. Availability of Documents

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

Document	ADAMS accession No.
Application for relicense of License Number R–87 with Power Uprate (July 7, 2008)	ML083040443
Purdue University Safety Analysis Report (June 30, 2008) [Redacted Version]	ML111890201
Purdue University—Request for Additional Information (RAI) Regarding License Renewal. [Decommissioning Funding Statement of Intent] (June 3, 2010).	ML101620125
Purdue University—Request For Additional Information Regarding The Purdue University Reactor License Renewal (Tac No. Me 1594), Responses To RAIs Dated 24 March 2010 [Responses To ML100820019, fin assurance, SOI, sig auth, fin rpt] (June 4, 2010).	ML101620184
Response to Request for Additional Information Regarding the Purdue University Reactor License Renewal (TAC ME1594), Response to RAIs Dated 6 July 2011 (ML101460429). (November 15, 2011).	ML11320A287
Purdue University—Request for Additional Information Regarding the License Renewal, Responses to RAIs Dated 6 July 2011 [Responses 11, 12, 13, 15, 16, 18, 21, 23, 25, 27, 28, 30, 31, 33, 35, 36, and 37] (January 4, 2012).	ML12006A193
Purdue University—Responses to the Request for Additional Information Regarding the Purdue University Reactor License Renewal dated July 6, 2011 [Responses 3, 4, 7, 10, 17, 19, 20, 22, 24, 29, 34, and 40] (January 30, 2012).	ML12031A223
Purdue University—Request for Additional Information Regarding the Purdue University Reactor License Renewal (TAC NO. ME 1594), Responses to RAIS (ML103400115 and ML103400250) (Redacted Version). [Responses 45, 55, 62, 65, 66, 67, 68, 70, and 73] (January 31, 2012).	ML14234A109
Request for Additional Information Regarding the Purdue University Reactor License Renewal (TAC ME1594), Responses to RAIs (ML103400115 and ML103400250). [Responses 43, 51, 56, 60, and 61] (June 1, 2012).	ML12156A364
Purdue University—Request for Additional Information Regarding the Purdue University Reactor License Renewal (TAC No. ME1594), Responses to RAIs (ML103400115 and ML103400250). [Response 46, 47, 52, 57, and 59] (June 15, 2012).	ML12170B018
Purdue University—Request for Additional Information Regarding the Purdue University Reactor License Renewal, Responses to RAIs (ML103400115 and ML103400250). [Response 48, 58, 96, 97 and 98] (June 29, 2012).	ML121850004
Purdue University—Request for Additional Information Regarding the Purdue University Reactor License Renewal, Response to RAI. [Response 49, 50, 53, 64, and 72] (July 13, 2012).	ML12201A070
Purdue University—Response to Request for Additional Information Regarding Purdue University Reactor License Renewal (TAC No. ME1594, Responses to RAIs (ML103400115 and ML103400250) [Responses 54, 69, 77, 78, and 92] (August 11, 2012).	ML12226A400
Purdue University—Response to Request Request for Additional Information Regarding the Purdue University Reactor License Renewal (TAC ME1594). [Responses 54, 69, 77, 78, and 92] (April 10, 2013).	ML13101A044
Purdue University—Request for Additional Information Regarding the Purdue University Reactor License Renewal Application (TAC No. ME1594), Responses to Letter Dated August 29, 2014 (ML14115A221). [RAI cover letter for responses to Aug 29, 2015 NRC letter] (July 24, 2015).	ML15210A280
Purdue University—Request for Additional Information Regarding the Purdue University Reactor License Renewal Application (TAC No. ME1594), Responses to Letter Dated August 29, 2014 (ML14115A221). Part 1 of 5. [RAI Responses part 1 of 5: responses (1–29), TS (30–64), d/c cost estimate (65–68), Requal (69–73), SAR Chs. 1–5 (70–162)] (July 24, 2015).	ML15210A282
Purdue University—Request for Additional Information Regarding the Purdue University Reactor License Renewal Application (TAC No. ME1594), Responses to Letter Dated August 29, 2014 (ML14115A221). Part 2 of 5. [RAI Responses part 2 of 5 (SAR chs. 6–15)] (July 24, 2015).	ML15210A283
Purdue University—Request for Additional Information Regarding the Purdue University Reactor License Renewal Application (TAC No. ME1594), Responses to Letter Dated August 29, 2014 (ML14115A221). Part 3 of 5. [RAI Responses Part 3 of 5 (drawings)] (July 24, 2015).	ML15210A285
Purdue University—Request for Additional Information Regarding the Purdue University Reactor License Renewal Application (TAC No. ME1594), Responses to Letter Dated August 29, 2014 (ML14115A221). Part 4 of 5. [RAI Responses Part 4 of 5 (drawings)] (July 24, 2015).	ML15210A287
Purdue University—Request for Additional Information Regarding the Purdue University Reactor License Renewal Application (TAC No. ME1594), Responses to Letter Dated August 29, 2014 (ML14115A221). Part 5 of 5. [RAI Responses part 5 of 5 (NATCON, Procedures, Drawings)] (July 24, 2015).	ML15210A288
Purdue University—Response to NRC Request for Additional Information Regarding Physical Security Plan Review for License Renewal (January 29, 2016).	ML16047A382
Purdue University—Re-Submittal Response to NRC Request for Additional Information Regarding Physical Security Plan Review for License Renewal (February 26, 2016).	ML16083A219
Purdue Re-Submittal of Response to NRC Request for Additional Information Re: Physical Security Plan Review for License Renewal (March 31, 2016).	ML16102A123
Purdue University—Second Re-Submittal of Response to NRC Request for Additional Information Regarding Physical Security Plan Review for License Renewal (May 9, 2016).	ML16134A083
Purdue University School of Nuclear Engineering Notice of ADAMS Document Correction, PUR–1, Docket 50–182, ML16187A371. Technical Specifications, Proposed Amendment 13 Enclosed. [Correction of the TSs, originally submitted under ML16187A371] (July 7, 2016).	ML16193A681
Purdue University Responses to Request for Additional Information re PUR–1 License Renewal and Power Uprate. [Responses to RAIs ML15328A314] (July 19, 2016).	ML16207A426
Purdue University—Response to Request for Additional Information Regarding the Reactor License Renewal Application, Responses to Letter dated July 25, 2016 (September 19, 2016).	ML16267A465
Purdue University—Explanation of Technical Specification Changes and Emergency Operator Action (September 29, 2016).	ML16277A165

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

For the Nuclear Regulatory Commission.

Duane A. Hardesty,

Acting Chief, Research and Test Reactors Licensing Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. 2016–26950 Filed 11–7–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0218]

Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving Proposed No Significant Hazards Considerations and Containing Sensitive Unclassified Non-Safeguards Information and Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment request; opportunity to comment, request a hearing, and petition for leave to intervene; order.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) received and is considering approval of four amendment requests. The amendment requests are for Crystal River Unit 3 Nuclear Generating Plant; Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2; Vogtle Electric Generating Plant, Units 3 and 4; and Browns Ferry Nuclear Plant, Units 1, 2, and 3. For each amendment request, the NRC proposes to determine that they involve no significant hazards consideration. Because each amendment request contains sensitive unclassified non-safeguards information (SUNSI) and/or safeguards information (SGI), an order imposes procedures to obtain access to SUNSI and SGI for contention preparation.

DATES: Comments must be filed by December 8, 2016. A request for a hearing must be filed by January 9, 2017. Any potential party as defined in § 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to SUNSI and/or SGI is necessary to respond to this notice must request document access by November 18, 2016.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0218. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: C. Kay Goldstein, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–1506, email: *Kay.Goldstein@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2016–0218, facility name, unit number(s), plant docket number, application date, and subject 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–2016–0218.
- *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 this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2016–0218, facility name, unit number(s), plant docket number, application date, and subject in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the NRC is publishing this notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This notice includes notices of amendments containing SUNSI and/or SGI.

III. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in § 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously

evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish a notice of issuance in the **Federal Register**. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and a petition to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a petition is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest. The petition must also set forth the specific contentions which the petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and request permission to cross-examine witnesses, consistent with the NRC's regulations, policies, and procedures.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii).

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1).

The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by January 9, 2017. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may also have the opportunity to participate under 10 CFR 2.315(c).

If a hearing is granted, any person who does not wish, or is not qualified, to become a party to the proceeding

may, in the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene (hereinafter ''petition''), and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* System requirements for accessing the E-Submittal server are available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/adjudicatory-sub.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Electronic Filing Help Desk will not be able to offer assistance in using unlisted software.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a petition. Submissions should be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public Web site at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 7 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, in some instances, a petition will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

For further details with respect to these license amendment applications, see the applications for amendment which are available for public inspection in ADAMS and at the NRC's PDR. For additional direction on accessing information related to this

document, see the ''Accessing Information and Submitting Comments'' section of this document.

Duke Energy Florida, Inc., et al., Docket No.: 50–302, Crystal River Unit 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: May 24, 2016. A publicly-available version is in ADAMS under Accession No. ML16152A045.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI) and safeguards information (SGI). The amendment would replace the Crystal River Unit 3 Nuclear Plant (CR–3) Physical Security Plan, Training and Qualification Plan, and Safeguards Contingency Plan with a new combined Independent Spent Fuel Storage Installation (ISFSI) Only Physical Security Plan, Training and Qualification Plan, and Safeguards Contingency Plan (altogether referred to as the PLAN). The PLAN will be used at CR–3 after all spent fuel has been transferred to the CR–3 ISFSI.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No.

The proposed PLAN and deletion of the cyber security plan will become effective after all the spent nuclear fuel has been removed from the Spent Fuel Pools (SFP) and there are no requirements to return spent fuel to the SFP. The only current design basis accident is the Fuel Handling Accident (FHA), once the fuel is removed from the pool and placed on the ISFSI pad, the FHA will no longer be credible.

The proposed amendment has no effect on plant systems, structures, and components (SSCs) and no effect on the capability of any plant SSC to perform its design function. The proposed amendment would not increase the likelihood of the malfunction of any plant SSC. Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of a previously evaluated accident.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No.

The proposed amendment does not involve significant physical alteration of the plant. Minor modifications are associated with this proposed amendment (*e.g.,* wiring changes in security equipment, the addition of telecommunications equipment, and software changes to the security computer system). The proposed license amendment would not physically change any SSCs involved in the mitigation of any postulated accident. Thus, no new initiators or precursors of a new or different kind of accident are created. Furthermore, the proposed amendment does not create the possibility of a new failure mode associated with any equipment or personnel failures. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

No.

Plant safety margins are established through limiting conditions for operation and safety analysis described in the FSAR. Because the 10 CFR part 50 license for CR–3 no longer authorizes operation of the reactor or emplacement or retention of fuel into the reactor vessel, as specified in 10 CFR 50.82(a)(2), the occurrence of postulated accidents associated with reactor operation is no longer credible. The proposed amendment does not involve a change in the plant's design, configuration, or operation. The modifications associated with this proposed amendment does not affect plant safety or design margins. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lara S. Nichols, 550 South Tryon Street, Charlotte, North Carolina 28202.

NRC Branch Chief: Bruce A. Watson, CHP.

Pacific Gas and Electric Company (PG&E), Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant (DCPP), Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment request: June 17, 2015, as supplemented by letters dated August 31, October 22, November 2, November 6, and December 17, 2015; and February 1, February 10, April 21, June 9, and September 15, 2016. Publicly-available versions are in ADAMS under Accession Nos. ML15176A539, ML15243A363, ML15295A470, ML15321A235, ML15310A522, ML16004A363, ML16032A603, ML16041A533, ML16120A026, ML16169A267, and ML16259A117, respectively.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendments would revise the Updated Final Safety Analysis Report (UFSAR) and Technical Specifications (TSs) to adopt the alternative source term (AST) as allowed by 10 CFR 50.67, ''Accident source term.'' The AST methodology, as established in NRC Regulatory Guide (RG) 1.183, ''Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors,'' July 2000 (ADAMS Accession No. ML003716792), is used to calculate the offsite and control room radiological consequences of postulated accidents for DCPP, Unit Nos. 1 and 2. The amendments would revise TS 1.1, ''Definitions,'' to change the definition of Dose Equivalent I–131; TS 3.4.16, ''RCS [Reactor Coolant System] Specific Activity,'' to revise the noble gas activity limit; TS 3.6.3, ''Containment Isolation Valves,'' to require the 48-inch containment purge supply and exhaust valves to be sealed closed during Modes 1, 2, 3, and 4; TS 5.5.11, ''Ventilation Filter Testing Program (VFTP),'' to change the allowable methyl iodide penetration testing criteria for the auxiliary building system charcoal filter; and TS 5.5.19, ''Control Room Habitability Program,'' to replace ''whole body or its equivalent to any part of the body,'' with ''Total Effective Dose equivalent (TEDE),'' which is the dose criteria specified in 10 CFR 50.67. The amendments would also add license conditions to Appendix D, ''Additional Conditions,'' of Facility Operating License Nos. DPR–80 and DPR–82 for DCPP, Unit Nos. 1 and 2.

The license amendment request was originally noticed in the **Federal Register** on October 13, 2015 (80 FR 61486). The notice is being reissued in its entirety to include the revised scope, description of the amendment request, and proposed no significant hazards consideration determination.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This license amendment does not physically impact any system, structure, or component (SSC) that is a potential initiator of an accident. Therefore, implementation of AST, the AST assumptions and inputs, the proposed TS changes, and newχ/Q [atmospheric dispersion factors] values have no impact on the probability for initiation of any design basis accident. Once the occurrence of an accident has been postulated, the new accident source term and χ/Q values are inputs to analyses that

evaluate the radiological consequences of the postulated events.

Reactor coolant specific activity, testing criteria of charcoal filters, and the accident induced primary-to-secondary system leakage performance criterion are not initiators for any accident previously evaluated. The proposed change to require the 48-inch containment purge valves to be sealed closed during operating MODES 1, 2, 3, and 4 is not an accident initiator for any accident previously evaluated. The change in the classification of a portion of the 40-inch Containment Penetration Area Ventilation line is also not an accident initiator for any accident previously evaluated. Thus, the proposed TS changes and AST implementation will not increase the probability of an accident.

The change to the decay time prior to fuel movement is not an accident initiator. Decay time is used to determine the source term for the dose consequence calculation following a potential FHA [fuel handling accident] and has no effect on the probability of the accident. Likewise, the change to the Control Room radiation monitors setpoint cannot cause an accident and the operation of containment spray during the recirculation phase is used for mitigation of a LOCA [loss-of-coolant accident], and thus not an accident initiator.

As a result, there are no proposed changes to the parameters or conditions that could contribute to the initiation of an accident previously evaluated in Chapter 15 of the Updated Final Safety Analysis Report (UFSAR). As such, the AST cannot affect the probability of an accident previously evaluated.

Regarding accident consequences, equipment and components affected by the proposed changes are mitigative in nature and relied upon once the accident has been postulated. The license amendment implements a new calculation methodology for determining accident consequences and does not adversely affect any plant component or system that is credited to mitigate fuel damage. Subsequently, no conditions have been created that could significantly increase the consequences of any accidents previously evaluated.

Requiring that the 48-inch containment purge supply and exhaust valves be sealed closed during operating MODES 1, 2, 3, and 4 eliminates a potential path for radiological release following events that result in radioactive material releases to the containment, thus reducing potential consequences of the event. The auxiliary building ventilation system allowable methyl iodide penetration limit is being changed, which results in more stringent testing requirements, and thus higher filter efficiencies for reducing potential releases.

Changes to the operation of the containment spray system to require operation during the recirculation mode are also mitigative in nature. While the plant design basis has always included the ability to implement containment spray during recirculation, this license amendment now requires operation of containment spray in the recirculation mode for dose mitigation. DCPP [Unit Nos. 1 and 2 are] designed and licensed to operate using containment spray in the recirculation mode. As such, operation of containment spray in the recirculation mode has already been analyzed, evaluated, and is currently controlled by Emergency Operating Procedures. Usage of recirculation spray reduces the consequence of the postulated event. Likewise, the additional shielding to the Control Room and the addition of a HEPA [high-efficiency particulate air] filter to the TSC [Technical Support Center] ventilation system reduces the consequences of the postulated event to the Control Room and TSC personnel. Lowering the limit for DEX [Dose Equivalent XE–133] lowers potential releases. By reclassifying a portion of the 40-inch Containment Penetration Area Ventilation line to PG&E Design Class I, this line will be seismically qualified, thus assuring that post-LOCA release points are the same as those used for determining χ/Q values.

The change to the decay time from 100 hours to 72 hours prior to fuel movement is an input to the FHA. Although less decay will result in higher released activity, the results of the FHA dose consequence analysis remain within the dose acceptance criteria of the event. Also, the radiation levels to an operator from a raised fuel assembly may increase due to a lower decay time, however, any exposure will continue to be maintained under 10 CFR 20 limits by the plant Radiation Protection Program.

Plant-specific radiological analyses have been performed using the AST methodology, assumption and inputs, as well as new χ/Q values. The results of the dose consequences analyses demonstrate that the regulatory acceptance criteria are met for each analyzed event. Implementing the AST involves no facility equipment, procedure, or process changes that could significantly affect the radioactive material actually released during an event. Subsequently, no conditions have been created that could significantly increase the consequences of any of the events being evaluated.

Based on the above discussion, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different accident from any accident previously evaluated?

Response: No.

This license amendment does not alter or place any SSC in a configuration outside its design or analysis limits and does not create any new accident scenarios.

The AST methodology is not an accident initiator, as it is a method used to estimate resulting postulated design basis accident doses. The proposed TS changes reflect the plant configuration that supports implementation of the new methodology and supports reduction in dose consequences. DCPP is designed and licensed to operate using containment spray in the recirculation mode. This change will not affect any operational aspect of the system or any other system, thus no new modes of operation are introduced by the proposed change.

The function of the radiation monitors has not changed; only the setpoint has changed as a result of an assessment of all potential release pathways. The continued operation of containment spray and the radiation monitor setpoint change do not create any new failure modes, alter the nature of events postulated in the UFSAR, nor introduce any unique precursor mechanism.

Requiring the 48-inch containment purge valves to be sealed closed during operating MODES 1, 2, 3, and 4 does not introduce any new accident precursor. This change only eliminates a potential release path for radionuclides following a LOCA.

The proposed TS testing criteria for the auxiliary building ventilation system charcoal filters cannot create an accident, but results in requiring more efficient filtration of potentially released iodine. The proposed changes to the DEX activity limit, the TS terminology, and the decay time of the fuel before movement are also unrelated to accident initiators.

The only physical changes to the plant being made in support of AST is the addition of Control Room shielding in an area previously modified, the addition of a HEPA filter at the intake of the TSC normal ventilation system, and the upgrade to the damper actuators, pressure switches, and damper solenoid valves to support reclassifying a portion of the Containment Penetration Area Ventilation line to PG&E Design Class I. Both Control Room shielding and HEPA filtration are mitigative in nature and do not have any impact on plant operation or system response following an accident. The Control Room modification for adding the shielding will meet applicable loading limits, so the addition of the shielding cannot initiate a failure. Upgrading damper actuators, pressure switches, and damper solenoid valves involve replacing existing components with components that are PG&E Design Class I. Therefore, the addition of shielding, a HEPA filter, and upgrading components cannot create a new or different kind of accident.

Since the function of the SSCs has not changed for AST implementation, no new failure modes are created by this proposed change. The AST change itself does not have the capability to initiate accidents.

Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Implementing the AST is relevant only to calculated dose consequences of potential design basis accidents evaluated in Chapter 15 of the UFSAR. The changes proposed in this license amendment involve the use of a new analysis methodology and related regulatory acceptance criteria. New atmospheric dispersion factors, which are based on site specific meteorological data, were calculated in accordance with regulatory guidelines. The proposed TS, TS Bases, and UFSAR changes reflect the plant configuration that will support implementation of the new methodology and result in operation in accordance with regulatory guidelines that support the revisions to the radiological analyses of the

limiting design basis accidents. Conservative methodologies, per the guidance of RG 1.183, have been used in performing the accident analyses. The radiological consequences of these accidents are all within the regulatory acceptance criteria associated with the use of AST methodology.

The change to the minimum decay time prior to fuel movement results in higher fission product releases after a FHA. However, the results of the FHA dose consequence analysis remain within the dose acceptance criteria of the event.

The proposed changes continue to ensure that the dose consequences of design basis accidents at the exclusion area, low population zone boundaries, in the TSC, and in the Control Room are within the corresponding acceptance criteria presented in RG 1.183 and 10 CFR 50.67. The margin of safety for the radiological consequences of these accidents is provided by meeting the applicable regulatory limits, which are set at or below the 10 CFR 50.67 limits. An acceptable margin of safety is inherent in these limits.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Jennifer Post, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Branch Chief: Robert J. Pascarelli.

Southern Nuclear Operating Company, Inc., Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant, Units 3 and 4, Burke County, Georgia

Date of amendment request: August 29, 2016. A publicly-available version is in ADAMS under Accession No. ML16242A399.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendment request proposes changes to the Updated Final Safety Analysis Report (UFSAR) in the form of departures from the incorporated plant-specific Design Control Document Tier 2* information. Specifically, the proposed change clarifies in the UFSAR how the quality and strength of a specific set of couplers welded to stainless steel embedment plates already installed and embedded in concrete are demonstrated through visual examination and static tension testing, in lieu of the nondestructive examination requirements of American Institute of Steel Construction (AISC) N690, ''Specification for Safety-Related Steel Structures for Nuclear Facilities.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below, with NRC staff edits in square brackets:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change describes how evaluation of coupler strength, and by extension, weld strength and quality are used to demonstrate the capacity of partial joint penetration (PJP) welds joining weldable couplers to stainless steel embedment plates as being able to perform their design function in lieu of satisfying the AISC N690–1994, Section Q1.26.2.2, Section Q1.26.2.3, and Section Q1.26.3 requirements for non-destructive examination (NDE) on 10 percent weld populations, reexamination, and repair, respectively. The proposed change does not affect the operation of any systems or equipment that initiate an analyzed accident or alter any structures, systems, and components (SSCs) accident initiator or initiating sequence of events.

The change has no adverse effect on the design function of the mechanical couplers or the SSCs to which the mechanical couplers are welded. The probabilities of the accidents evaluated in the Updated Final Safety Analysis Report (UFSAR) are not affected.

The change does not impact the support, design, or operation of mechanical and fluid systems. The change does not impact the support, design, or operation of any safety-related structures. There is no change to plant systems or the response of systems to postulated accident conditions. There is no change to the predicted radioactive releases due to normal operation or postulated accident conditions. The plant response to previously evaluated accidents or external events is not adversely affected, nor does the proposed change create any new accident precursors.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change describes how evaluation of coupler strength, and by extension, weld strength and quality are used to demonstrate the capacity of PJP welds joining weldable couplers to stainless steel embedment plates as being able to perform their design function in lieu of satisfying the AISC N690–1994, Section Q1.26.2.2, Section Q1.26.2.3, and Section Q1.26.3 requirements for non-destructive examination on 10 percent weld populations, reexamination, and repair, respectively. The proposed change does not affect the operation of any systems or equipment that may initiate a new or different kind of accident, or alter any SSC such that a new accident initiator or initiating sequence of events is created.

The proposed change does not adversely affect the design function of the mechanical couplers, the structures in which the couplers are used, or any other SSC design functions or methods of operation in a manner that results in a new failure mode, malfunction, or sequence of events that affect safety-related or non-safety-related equipment. This activity does not allow for a new fission product release path, result in a new fission product barrier failure mode, or create a new sequence of events that result in significant fuel cladding failures.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change describes how evaluation of coupler strength, and by extension, weld strength and quality are used to demonstrate the capacity of the PJP welds joining weldable couplers to stainless steel embedment plates as being able to perform their design function in lieu of satisfying the AISC N690–1994, Section Q1.26.2.2, Section Q1.26.2.3, and Section Q1.26.3 requirements for non-destructive examination on 10 percent weld populations, reexamination, and repair, respectively. The proposed change satisfies the same design functions as stated in the UFSAR. This change does not adversely affect compliance with any design function, design analysis, safety analysis input or result, or design/safety margin. No safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the proposed change.

Because no safety analysis or design basis acceptance limit/criterion is challenged or exceeded by this change, no significant margin of safety is reduced.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, Alabama 35203–2015.

NRC Branch Chief: Michael T. Markley.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant (BFN), Units 1, 2, and 3, Limestone County, Alabama

Date of amendment request: July 14, 2016. A publicly-available version is in

ADAMS under Accession No. ML16197A372.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendments would revise the Cyber Security Plan (CSP) implementation schedule for Milestone 8 and the associated license condition in the Facility Operating Licenses.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises the CSP Milestone 8 implementation date. This change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change is an extension to the completion date of implementation Milestone 8, that in itself does not require any plant modifications which affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents and have no impact on the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change revises the CSP Implementation Schedule. This proposed change to extend the completion date of implementation Milestone 8 does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the structures, systems and components relied upon to mitigate the consequences of postulated accidents. This change also does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Plant safety margins are established through limiting conditions for operation, limiting safety system settings, and safety limits specified in the technical specifications. The proposed change extends the CSP Implementation Schedule. Because there is no change to these established safety margins as result of this change, the proposed change does not involve a significant reduction in a margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Dr., WT 6A–K, Knoxville, Tennessee 37902.

NRC Acting Branch Chief: Tracy J. Orf.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation

Duke Energy Florida, Inc., Docket No. 50–302, Crystal River Unit 3 Nuclear Generating Plant, Citrus County, Florida

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Southern Nuclear Operating Company, Inc., Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant, Units 3 and 4, Burke County, Georgia

Tennessee Valley Authority, Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing sensitive unclassified information (including Sensitive Unclassified Non-Safeguards Information (SUNSI) and Safeguards Information (SGI)). Requirements for access to SGI are primarily set forth in 10 CFR parts 2 and 73. Nothing in this Order is intended to conflict with the SGI regulations.

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI or SGI is necessary to respond to this notice may request access to SUNSI or SGI. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI or SGI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI, SGI, or both to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1);

(3) If the request is for SUNSI, the identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention; and

(4) If the request is for SGI, the identity of each individual who would have access to SGI if the request is granted, including the identity of any expert, consultant, or assistant who will aid the requestor in evaluating the SGI. In addition, the request must contain the following information:

(a) A statement that explains each individual's ''need to know'' the SGI, as required by 10 CFR 73.2 and 10 CFR 73.22(b)(1). Consistent with the definition of ''need to know'' as stated in 10 CFR 73.2, the statement must explain:

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI and/or SGI under these procedures should be submitted as described in this paragraph.

(i) Specifically why the requestor believes that the information is necessary to enable the requestor to proffer and/or adjudicate a specific contention in this proceeding; [2] and

(ii) The technical competence (demonstrable knowledge, skill, training or education) of the requestor to effectively utilize the requested SGI to provide the basis and specificity for a proffered contention. The technical competence of a potential party or its counsel may be shown by reliance on a qualified expert, consultant, or assistant who satisfies these criteria.

(b) A completed Form SF–85, ''Questionnaire for Non-Sensitive Positions'' for each individual who would have access to SGI. The completed Form SF–85 will be used by the Office of Administration to conduct the background check required for access to SGI, as required by 10 CFR part 2, subpart G and 10 CFR 73.22(b)(2), to determine the requestor's trustworthiness and reliability. For security reasons, Form SF–85 can only be submitted electronically through the electronic questionnaire for investigations processing (e-QIP) Web site, a secure Web site that is owned and operated by the Office of Personnel Management. To obtain online access to the form, the requestor should contact the NRC's Office of Administration at 301–415–3710.[3]

(c) A completed Form FD–258 (fingerprint card), signed in original ink, and submitted in accordance with 10 CFR 73.57(d). Copies of Form FD–258 may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by calling 1–630–829–9565, or by email to *Forms.Resource@nrc.gov.* The fingerprint card will be used to satisfy the requirements of 10 CFR part 2, 10 CFR 73.22(b)(1), and Section 149 of the Atomic Energy Act of 1954, as amended, which mandates that all persons with access to SGI must be fingerprinted for an FBI identification and criminal history records check.

(d) A check or money order payable in the amount of $333.00 [4] to the U.S. Nuclear Regulatory Commission for each individual for whom the request for access has been submitted.

(e) If the requestor or any individual who will have access to SGI believes they belong to one or more of the categories of individuals that are exempt from the criminal history records check and background check requirements in 10 CFR 73.59, the requestor should also provide a statement identifying which exemption the requestor is invoking and explaining the requestor's basis for believing that the exemption applies. While processing the request, the Office of Administration, Personnel Security Branch, will make final determination whether the claimed exemption applies. Alternatively, the requestor may contact the Office of Administration for an evaluation of their exemption status prior to submitting their request. Persons who are exempt from the background check are not required to complete the SF–85 or Form FD–258; however, all other requirements for access to SGI, including the need to know, are still applicable.

Note: Copies of documents and materials required by paragraphs C.(4)(b), (c), and (d) of this Order must be sent to the following address: U.S. Nuclear Regulatory Commission, ATTN: Personnel Security Branch, Mail Stop TWFN–03–B46M, 11555 Rockville Pike, Rockville, MD 20852.

These documents and materials should *not* be included with the request letter to the Office of the Secretary, but the request letter should state that the forms and fees have been submitted as required.

D. To avoid delays in processing requests for access to SGI, the requestor should review all submitted materials for completeness and accuracy (including legibility) before submitting them to the NRC. The NRC will return incomplete packages to the sender without processing.

E. Based on an evaluation of the information submitted under paragraphs C.(3) or C.(4) above, as applicable, the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI or need to know the SGI requested.

F. For requests for access to SUNSI, if the NRC staff determines that the requestor satisfies both E.(1) and E.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.[5]

G. For requests for access to SGI, if the NRC staff determines that the requestor has satisfied both E.(1) and E.(2) above, the Office of Administration will then determine, based upon completion of the background check, whether the proposed recipient is trustworthy and reliable, as required for access to SGI by 10 CFR 73.22(b). If the Office of Administration determines that the individual or individuals are trustworthy and reliable, the NRC will promptly notify the requestor in writing. The notification will provide the names of approved individuals as well as the conditions under which the SGI will be provided. Those conditions may include, but not be limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order [6] by each individual who will be granted access to SGI.

H. Release and Storage of SGI. Prior to providing SGI to the requestor, the NRC staff will conduct (as necessary) an inspection to confirm that the recipient's information protection system is sufficient to satisfy the requirements of 10 CFR 73.22. Alternatively, recipients may opt to view SGI at an approved SGI storage location rather than establish their own SGI protection program to meet SGI protection requirements.

I. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI or SGI must be filed by the requestor no later than 25 days after the requestor is granted access to that

[2] Broad SGI requests under these procedures are unlikely to meet the standard for need to know; furthermore, staff redaction of information from requested documents before their release may be appropriate to comport with this requirement. These procedures do not authorize unrestricted disclosure or less scrutiny of a requestor's need to know than ordinarily would be applied in connection with an already-admitted contention or non-adjudicatory access to SGI.

[3] The requestor will be asked to provide his or her full name, social security number, date and place of birth, telephone number, and email address. After providing this information, the requestor usually should be able to obtain access to the online form within one business day.

[4] This fee is subject to change pursuant to the Office of Personnel Managements adjustable billing rates.

[5] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[6] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SGI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 180 days of the deadline for the receipt of the written access request.

information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.

J. Review of Denials of Access.

(1) If the request for access to SUNSI or SGI is denied by the NRC staff either after a determination on standing and requisite need, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) Before the Office of Administration makes an adverse determination regarding the proposed recipient(s) trustworthiness and reliability for access to SGI, the Office of Administration, in accordance with 10 CFR 2.705(c)(3)(iii), must provide the proposed recipient(s) any records that were considered in the trustworthiness and reliability determination, including those required to be provided under 10 CFR 73.57(e)(1), so that the proposed recipient(s) have an opportunity to correct or explain the record.

(3) The requestor may challenge the NRC staff's adverse determination with respect to access to SUNSI by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

(4) The requestor may challenge the NRC staff's or Office of Administration's adverse determination with respect to access to SGI by filing a request for review in accordance with 10 CFR 2.705(c)(3)(iv). Further appeals of decisions under this paragraph must be made pursuant to 10 CFR 2.311.

K. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI or SGI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[7]

L. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI or SGI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. The attachment to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 25th of October, 2016.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION AND SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/Activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non Safeguards Information (SUNSI) and/or Safeguards Information (SGI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding; demonstrating that access should be granted (*e.g.,* showing technical competence for access to SGI); and, for SGI, including application fee for fingerprint/background check.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI and/or SGI (+25 Answers to petition for intervention; +7 requestor/petitioner reply).
20	U.S. Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows (1) need for SUNSI or (2) need to know for SGI. (For SUNSI, NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents). If NRC staff makes the finding of need to know for SGI and likelihood of standing, NRC staff begins background check (including fingerprinting for a criminal history records check), information processing (preparation of redactions or review of redacted documents), and readiness inspections.
25	If NRC staff finds no ''need,'' no ''need to know,'' or no likelihood of standing, the deadline for requestor/petitioner to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.

[7] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI/SGI request submitted to the NRC staff under these procedures.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION AND SAFEGUARDS INFORMATION IN THIS PROCEEDING—Continued

Day	Event/Activity
190	(Receipt +180) If NRC staff finds standing, need to know for SGI, and trustworthiness and reliability, deadline for NRC staff to file motion for Protective Order and draft Non-disclosure Affidavit (or to make a determination that the proposed recipient of SGI is not trustworthy or reliable). Note: Before the Office of Administration makes an adverse determination regarding access to SGI, the proposed recipient must be provided an opportunity to correct or explain information.
205	Deadline for petitioner to seek reversal of a final adverse NRC staff trustworthiness or reliability determination either before the presiding officer or another designated officer under 10 CFR 2.705(c)(3)(iv).
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI and/or SGI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI and/or SGI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI and/or SGI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2016–26096 Filed 11–7–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0228]

Statistical Terminology and Notation for Special Nuclear Materials Control and Accountability

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; withdrawal.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is withdrawing Regulatory Guide (RG) 5.3, ''Statistical Terminology and Notation for Special Nuclear Materials Control and Accountability,'' that was issued in 1973. This document is being withdrawn in part because regulatory guidance is not needed for common statistical terminology and notation information that is commonly used in the field of statistics. Further, RG 5.3 provided guidance on the term ''limits of error'' as defined in the NRC's regulations. This term is no longer a defined regulatory term and is no longer used by the NRC except in certain transaction reports. Also, RG 5.3 endorsed a 1972 American National Standards Institute (ANSI) standard that was later withdrawn. Therefore, the NRC finds that RG 5.3 is obsolete.

DATES: The effective date of the withdrawal of RG 5.3, ''Statistical Terminology and Notation for Special Nuclear Materials Control and Accountability'' is November 8, 2016.

ADDRESSES: Please refer to Docket ID NRC–2016–0228 when contacting the NRC about the availability of information regarding this document. You may obtain publically-available information related to this document, using the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0228. 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 Document collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. The basis for the withdrawal of this guide is found in ADAMS under Accession No. ML16216A145.
- *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.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

FOR FURTHER INFORMATION CONTACT: Glenn Tuttle, Office of Nuclear Materials Safety and Safeguards, telephone: 301–415–7230, email: *Glenn.Tuttle@nrc.gov* and Harriet Karagiannis, Office of Nuclear Regulatory Research, telephone: 301–415–2493, email: *Harriet.Karagiannis@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

The NRC staff issued RG 5.3 in February 1973 to provide guidance on material control and accounting (MC&A) requirements that were then set forth in section 70.51 of Title 10 of the *Code of Federal Regulations* (10 CFR). In 2002, the requirements for recordkeeping were established, and the 10 CFR 70.51(b)–(d) provisions were transferred to 10 CFR 74.19, ''Recordkeeping.'' Furthermore, RG 5.3 endorsed the American National Standards Institute (ANSI) Standard N15.5–1972, ''Statistical Terminology and Notation for Nuclear Materials Management,'' and thus provided NRC guidance for acceptable terminology and notation concerning statistical analyses of accountability data for special nuclear material (SNM) control purposes that licensees could use when establishing their written MC&A procedures necessary to enable them to account for SNM in their possession.

Regulatory Guide 5.3 provided guidance on the statistical terminology and notation used in ANSI N15.5–1972, and such information is now found in any elementary statistics textbook. A specific regulatory guide on common statistical terminology and notation is therefore no longer needed. In addition, ANSI N15.5–1972 has been withdrawn by ANSI in coordination with the

Institute of Nuclear Materials Management. Only one of the terms ''limits of error,'' referenced in ANSI N15.5–1972 had a definition specific to MC&A applications, and this term was defined in 10 CFR 70.51(a)(5). In moving the 10 CFR 70.51(a) definitions to 10 CFR 74.4 in 2002, the ''limits of error'' definition was removed, and this term is no longer used by the NRC except in transaction reports submitted to the national database.

Further, any other statistical terms that require explanation or clarification are now included in the 10 CFR 74.4 set of MC&A definitions, and regulatory guidance related to MC&A definitions is included in NUREG–1065, ''Acceptable Standard Format and Content for the Fundamental Nuclear Material Control (FNMC) Plan Required for Low-Enriched Uranium Facilities,'' (ADAMS Accession No. ML031340288) and NUREG/CR–5734, ''Recommendations to the NRC on Acceptable Standard Format and Content for the Fundamental Nuclear Material Control (FNMC) Plan Required for Low-Enriched Uranium Enrichment Facilities'' (ADAMS Accession No. ML15120A354). Additional general statistical information is provided in NUREG/CR–4604, ''Statistical Methods for Nuclear Materials Management'' (ADAMS Accession No. ML103430339).

Because RG 5.3 is no longer needed, the NRC is withdrawing RG 5.3. Withdrawal of a regulatory guide means that the guide no longer provides useful information or has been superseded by other guidance, technological innovations, congressional actions, changes in NRC regulations, or other events. The withdrawal of RG 5.3 does not alter any prior or existing NRC licensing approval or the acceptability of licensee commitments to RG 5.3. Although RG 5.3 is withdrawn, current licensees may continue to use it, and withdrawal does not affect any existing licenses or agreements. However, RG 5.3 should not be used in future requests or applications for NRC licensing actions.

Dated at Rockville, Maryland, this 2nd day of November, 2016.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2016–26911 Filed 11–7–16; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Meeting—November 30, 2016 Public Hearing

TIME AND DATE: 2 p.m.,Wednesday, November 30, 2016.

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue NW., Washington, DC.

STATUS: Hearing open to the public at 2 p.m.

Purpose

Public Hearing in conjunction with each meeting of OPIC's Board of Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation.

Procedures

Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5 p.m. Wednesday, November 23, 2016. The notice must include the individual's name, title, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 p.m. Wednesday, November 23, 2016. Such statement must be typewritten, double spaced, and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda, which will be available at the hearing, that identifies speakers, the subject on which each participant will speak, and the time allotted for each presentation.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

Written summaries of the projects to be presented at the December 8, 2016, Board meeting will be posted on OPIC's Web site.

CONTACT PERSON FOR INFORMATION: Information on the hearing may be obtained from Catherine F. I. Andrade at (202) 336–8768, via facsimile at (202) 408–0297, or via email at *Catherine.Andrade@opic.gov.*

Dated: November 4, 2016.

Catherine F.I. Andrade,

OPIC Corporate Secretary.

[FR Doc. 2016–27074 Filed 11–4–16; 4:15 pm]

BILLING CODE 3210–01–P

PEACE CORPS

Information Collection Request Submission for OMB Review; Correction

AGENCY: Peace Corps.

ACTION: Action/correction.

SUMMARY: The Peace Corps published a document in the **Federal Register** of September 15, 2016, concerning request for comments on information collection request submission for OMB Review. The document contained the incorrect action.

FOR FURTHER INFORMATION CONTACT: Denora Miller, 202–692–1236.

Correction:

In the **Federal Register** of September 15, 2016, in FR Doc. 2016–22142, on page 1, in the second row, correct the ''Action'' caption to read:

ACTION: 30-Day notice and request for comments.

Dated: November 3, 2016.

Monique Harris,

FOIA/Privacy Act Specialist, Management.

[FR Doc. 2016–26945 Filed 11–7–16; 8:45 am]

BILLING CODE 6051–01–P

OFFICE OF PERSONNEL MANAGEMENT

OMB No. 3206–0218, Death Benefit Payment Rollover Election, Form No. RI 94–7

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: 30-Day notice and request for comments.

SUMMARY: The Retirement Services within OPM offers the general public and other Federal agencies the opportunity to comment on an extension, without change, of a currently approved information collection request (ICR) OMB No. 3206–0218, Death Benefit Payment Rollover Election, Form No. RI 94–7. As required by the Paperwork Reduction Act of 1995 as amended by the Clinger-Cohen Act, OPM is soliciting comments for this collection. The information collection was previously published in the **Federal Register** (81 FR 44898, July 11, 2016) allowing for a 60-day public comment

period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until December 8, 2016. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent by email to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent by email to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Form RI 94–7 provides Federal Employees Retirement System (FERS) surviving spouses and former spouses with the means to elect payment of FERS rollover-eligible benefits directly or to an Individual Retirement Arrangement (IRA), eligible employer plan or Thrift Savings Plan (TSP) account. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of OPM, including whether the information will have practical utility;

2. Evaluate the accuracy of OPM's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Death Benefit Payment Rollover Election.

OMB: 3206–0218.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 3,444.

Estimated Time per Respondent: 1 hour.

Total Burden Hours: 3,444.

U.S. Office of Personnel Management.

Beth Cobert,

Acting Director.

[FR Doc. 2016–26890 Filed 11–7–16; 8:45 am]

BILLING CODE 6325–38–P

POSTAL SERVICE

Product Change—First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* November 8, 2016.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 2, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add First-Class Package Service Contract 65 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2017–14, CP2017–30.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–26898 Filed 11–7–16; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* November 8, 2016.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 2, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 254 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2017–15, CP2017–31.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–26897 Filed 11–7–16; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* November 8, 2016.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 2, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 255 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2017–16, CP2017–32.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–26896 Filed 11–7–16; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79222; File No. SR–BatsBZX–2016–71]

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Period for the Supplemental Competitive Liquidity Provider Program

November 2, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 28, 2016, Bats BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to extend the pilot period for the Exchange's Supplemental Competitive Liquidity Provider Program (the ''Program''), which is currently set to expire on October 28, 2016, to expire on November 4, 2016.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

On August 30, 2011, the Exchange received approval of rules applicable to the qualification, listing and delisting of securities of issuers on the Exchange.[3] More recently, the Exchange received approval to operate a pilot program that is designed to incentivize certain Market Makers[4] registered with the Exchange as ETP CLPs, as defined in Interpretation and Policy .03 to Rule 11.8, to enhance liquidity on the Exchange in certain ETPs[5] listed on the Exchange and thereby qualify to receive part of a daily rebate as part of the Program under Interpretation and Policy .03 to Rule 11.8.[6]

The Program was approved by the Commission on a pilot basis running one-year from the date of implementation.[7] The Commission approved the Program on July 28, 2014.[8] The Exchange implemented the Program on July 28, 2014 and the pilot period for the Program was originally scheduled to end on July 28, 2015 until it was extended to end on October 28, 2015,[9] later extended to January 28, 2016,[10] again extended to April 28, 2016,[11] again extended to July 28, 2016,[12] and most recently extended to October 28, 2016.[13]

Proposal To Extend the Operation of the Program

The Exchange established the Program in order to enhance liquidity on the Exchange in certain ETPs listed on the Exchange (and thereby enhance the Exchange's ability to compete as a listing venue) by providing a mechanism by which ETP CLPs compete for part of a daily quoting incentive on the basis of providing the most aggressive quotes with the greatest amount of size. Such competition has the ability to reduce spreads, facilitate the price discovery process, and reduce costs for investors trading in such securities, thereby promoting capital formation and helping the Exchange to compete as a listing venue. As such, the Exchange believes that it is appropriate to extend the current operation of the Program. Through this filing, the Exchange seeks to extend the current pilot period of the Program until November 4, 2016.[14]

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[15] In particular, the Exchange believes the proposed change furthers the objectives of Section 6(b)(5) of the Act,[16] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that extending the pilot period for the Program is consistent with these principles because the Program is reasonably designed to enhance quote competition, improve liquidity in securities listed on the Exchange, support the quality of price discovery, promote market transparency, and increase competition for listings and trade executions, while reducing spreads and transaction costs in such securities. Maintaining and increasing liquidity in Exchange-listed securities will help raise investors' confidence in

[3] *See* Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018).

[4] As defined in BZX Rules, the term ''Market Maker'' means a Member that acts as a market maker pursuant to Chapter XI of BZX Rules.

[5] ETP is defined in Interpretation and Policy .03(b)(4) to Rule 11.8.

[6] *See* Securities Exchange Act Release No. 72692 (July 28, 2014), 79 FR 44908 (August 1, 2014) (SR–BATS–2014–022) (''CLP Approval Order'').

[7] *See id* at 44909.

[8] *Id.*

[9] *See* Securities Exchange Act Release No. 75518 (July 24, 2015), 80 FR 45566 (July 30, 2015 (SR–BATS–2015–55).

[10] *See* Securities Exchange Act Release No. 76293 (October 28, 2015), 80 FR 67808 (November 3, 2015) (SR–BATS–2015–96).

[11] *See* Securities Exchange Act Release No. 77033 (February 2, 2016), 81 FR 6558 (February 8, 2016) (SR–BATS–2016–12).

[12] *See* Securities Exchange Act Release No. 77721 (April 27, 2016), 81 FR 26591 (May 3, 2016) (SR–BatsBZX–2016–11).

[13] *See* Securities Exchange Act Release No. 78454 (August 2, 2016), 81 FR 52494 (August 8, 2016) (SR–BatsBZX–2016–46).

[14] The Exchange notes that it is proposing to extend the Program for only one week in order to provide the Exchange with time to update its Web site and submit to the Commission monthly data reports related to the Program as described in the CLP Approval Order going back to July 2015, upon the completion of which the Exchange plans to file a longer-term extension to the Program. Such reports are available at the following link: *http://www.bats.com/us/equities/etfmarketplace/trade_on_bats/clp/reports/.*

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

the fairness of the market and their transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change extends an established pilot program, thus allowing the Program to enhance competition in both the listings market and in competition for market makers. The Program will continue to promote competition in the listings market by providing issuers with a vehicle for paying the Exchange additional fees in exchange for incentivizing tighter spreads and deeper liquidity in listed securities and allow the Exchange to continue to compete with similar programs at Nasdaq Stock Market LLC [17] and NYSE Arca Equities, Inc.[18]

The Exchange also believes that extending the pilot program will allow the Program to continue to enhance competition among market participants by creating incentives for market makers to compete to make better quality markets. By continuing to require that market makers both meet the quoting requirements and also compete for the daily financial incentives, the quality of quotes on the Exchange will continue to improve. This, in turn, will attract more liquidity to the Exchange and further improve the quality of trading in exchange-listed securities participating in the Program, which will also act to bolster the Exchange's listing business.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (A) Significantly affect the protection of investors or the public interest; (B) impose any significant burden on competition; and (C) by its terms, become operative for 30 days from the date on which it was filed or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [19] and paragraph (f)(6) of Rule 19b–4 thereunder.[20]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative before 30 days from the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[21] 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. The Exchange asserts that waiver of the operative delay will allow the Exchange to extend the Program prior to its expiration on October 28, 2016, which will ensure that the Program continues to operate uninterrupted while the Exchange and the Commission continue to analyze data regarding the Program. The Commission notes that this filing's proposal to extend the Program for only one week is based on the Exchange's representation that the one-week period will allow the Exchange time to update its Web site and submit to the Commission monthly data reports related to the Program as described in the CLP Approval Order going back to July 2015, and that, upon the completion of the update and submission, the Exchange will file a longer-term extension to the Program.[22] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing with the Commission.[23]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (1) Necessary or appropriate in the public interest; (2) for the protection of investors; or (3) otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–BatsBZX–2016–71 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 No. SR–BatsBZX–2016–71. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BatsBZX–2016–71 and should be submitted on or before November 29, 2016.

[17] *See* Securities Exchange Act Release No. 69195 (March 20, 2013), 78 FR 18393 (March 26, 2013) (SR–NASDAQ–2012–137).

[18] *See* Securities Exchange Act Release No. 69335 (April 5, 2013), 78 FR 35340 (June 12, 2013) (SR–NYSEARCA–2013–34).

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived the pre-filing requirement.

[21] 17 CFR 240.19b–4(f)(6)(iii).

[22] *See supra* note 14.

[23] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Brent J. Fields,

Secretary.

[FR Doc. 2016–26908 Filed 11–7–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79221; File No. SR–Phlx–2016–107]

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Exchange Rule 1079 Concerning the Process of Initiating a FLEX Transaction and Determining the Best Bid or Offer

November 2, 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, NASDAQ PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 1079, FLEX Index, Equity, and Currency Options, at Section (b), Procedure for Quoting and Trading FLEX Options.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend section (b), Procedure for Quoting and Trading FLEX Options, of Rule 1079. Specifically, the Exchange proposes to amend subsection (1), Requesting Quotations, by largely reversing the changes it made to that subsection in a 2013 proposed rule change (the ''2013 Amendments'').[3] The changes proposed herein deal only with the process of initiating a FLEX transaction and determining the best bid or offer (''BBO''). No other aspects of Rule 1079, as changed by the 2013 Amendments, are proposed to be amended.

FLEX option transactions on the Exchange are governed by Rule 1079. Under Rule 1079(b) a Requesting Member may obtain quotes and execute trades in certain non-listed FLEX options at the specialist post of the non-FLEX option on the Exchange. The Requesting Member is a Phlx member, qualified to trade FLEX options pursuant to paragraph (c) of Rule 1079, who initiates a FLEX Request For Quotes (''RFQ'') pursuant to Rule 1079(b).[4] FLEX options are not continuously quoted and series are not pre-established. Moreover, the Exchange's electronic quoting and trading system is not available for FLEX options. The variable terms of FLEX options are established through the process described in Rule 1079.

Pursuant to the 2013 Amendments, the Exchange revised a number of its FLEX rules, which it stated were intended to be similar to those of NYSE MKT LLC (''*Amex*''). Rule 1079(b)(1) was revised to require the Requesting Member to submit to the FLEX Specialist an RFQ utilizing for that purpose the forms, formats and procedures established by the Exchange. The 2013 Amendments also amended Rule 1079(b)(1) to provide that, on receipt of an RFQ in proper form, the assigned FLEX Specialist shall cause the terms and specifications of the RFQ to be immediately announced at the post. Thus, the 2013 Amendments added new requirements mandating the participation of an assigned FLEX Specialist at the inception of every FLEX transaction.

Prior to the 2013 Amendments, Rule 1079(b)(1) permitted a Requesting Member to initiate an RFQ *without* the participation of a FLEX Specialist, by first announcing all of the following contract terms to the trading crowd of the non-FLEX option and then submitting an RFQ ticket to that specialist post: (1) Underlying index, security or foreign currency; (2) type, size, and crossing intention; (3) in the case of FLEX index options and FLEX equity options, exercise style; (4) expiration date; (5) exercise price; and (6) respecting index options, the settlement value. Thereafter, on receipt of an RFQ in proper form, the assigned Specialist or Requesting Member was required to cause the terms of the RFQ to be disseminated as an administrative text message through the Options Price Reporting Authority (''OPRA''). Operationally, the Requesting Member provided this information to Exchange staff who entered it into Exchange systems.[5]

Because most Exchange specialists no longer have a presence on the Exchange's trading floor, and are therefore unable to trade FLEX options, and because Exchange specialists (remote or otherwise) may have no interest in being an assigned FLEX Specialist in any event, the Exchange proposes to revert to Rule 1079(b)(1) largely as it read prior to the 2013 Amendments. That language did not require the participation of a FLEX Specialist to initiate a FLEX trade. As revised, the rule will once again permit FLEX transactions to be initiated without the participation of a specialist so long as all other requirements of Rule

[24] 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. 69586 (May 15, 2013), 78 FR 29797 (May 21, 2013) (SR–Phlx–2013–50) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to FLEX Options).

[4] All transactions must be in compliance with Section 11(a) of the Securities Exchange Act of 1934 and the rules promulgated thereunder, which may include yielding priority to customer orders.

[5] *See* Securities Exchange Act Release No. 39549 (January 14, 1998), 63 FR 3601 (January 23, 1998) (Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 2, 4, and 5 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Listing of Flexible Exchange Traded Equity and Index Options) (SR–Phlx–96–38) (the ''1998 Approval Order'') at footnote 36. The 2013 Amendments also revised Rule 1079(b)(1) by eliminating the original requirement that the assigned Specialist *or* the Requesting Member cause the terms of the RFQ to be disseminated as an OPRA text message, and by substituting for that original requirement a statement, in passive voice that does not specify on whom the obligation is imposed, that the terms and specifications of the RFQ ''shall be disseminated as an administrative text message through OPRA.'' As a matter of practice today, the Requesting Member still provides this information to Exchange staff who enter it into Exchange systems.

1079 have been met, consistent with the intent of the original proposed rule change adopting the Rule 1079 provisions applicable to FLEX equity and index options.[6]

The Exchange did not intend for the 2013 Amendments to expand the role of a FLEX Specialist beyond the provisions of Rule 1079(b)(1) that the Exchange is now proposing to roll back to their wording prior to the 2013 Amendments. Because the Exchange did not intend for the 2013 Amendments to expand the role of a FLEX Specialist in any case, the current proposed change to roll Rule 1079(b)(1) back to its wording prior to the 2013 Amendments will have no collateral consequences for the FLEX trading process under the rest of Rule 1079's provisions. In particular, the Exchange notes that the BBO (the best bid, offer or both, as applicable, entered in response to an RFQ) can be determined by the Requesting Member, without the assistance or intervention of a FLEX Specialist, consistent with the original 1998 Approval Order.[7] Removing the requirement that a FLEX Specialist receive the RFQ and announce its terms and conditions to the crowd should have no effect on the remaining processes outlined in Rule 1079 for the trading in FLEX options.

In practice, initially due to oversight by Exchange staff, the Exchange has not required the participation of an assigned FLEX Specialist as provided for in the 2013 Amendments but has instead continued to permit FLEX trading to occur without an assigned FLEX Specialist, just as FLEX trading has been conducted since the original 1998 Approval Order. Further, the negative practical effects of the superfluous FLEX Specialist participation requirement appear to have been inadequately considered by the Exchange when the requirement was initially adopted in the 2013 Amendments as a very small part of a more extensive set of amendments to Rule 1079 dealing with unrelated matters.[8] As noted above, the Exchange advanced no policy reason for the requirement when it was adopted other than a general desire to track the language of another exchange's FLEX rule. It identified no problem that the Specialist participation requirement was intended to remedy. The Exchange now desires to eliminate the needless requirement, originally added in the 2013 Amendments for no substantive reason, and return Rule 1079(b)(1) to its previous language pursuant to which FLEX option transactions have been successfully executed since the 1998 Approval Order.

Finally, the Exchange proposes to amend the introductory language to Rule 1079, which provides that a Requesting Member shall obtain quotes and execute trades in certain non-listed FLEX options at the specialist post of the non-FLEX option on the Exchange. The Exchange proposes to delete the reference to the ''specialist'' post, which is a term no longer commonly used at the Exchange. Rather, the area where an option is traded is now simply referred to as a post.[9]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, because the Commission has previously approved the proposed language in the 1998 Approval Order. The proposal eliminates a requirement that a FLEX Specialist participate in the initiation of every FLEX transaction which, given the general absence of specialists on the Exchange trading floor, may needlessly constrain FLEX trading. Importantly, as stated above, the Exchange's 2013 Amendments did not advance a particular policy or reason for amending the Rule 1079(b)(1) language or the language in Rule 1079(b)(3) permitting the Requesting Member to determine the BBO in the absence of an assigned Specialist, other than a general intent to track Amex rule language. There is consequently no policy reason not to return the rule language to the wording as it existed prior to the 2013 Amendments.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that amendments proposed herein will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act inasmuch as they simply reinstate previous Exchange rule language which had been approved by the Commission, and remove an outdated reference to the specialist post.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[12] and subparagraph (f)(6) of Rule 19b–4 thereunder.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in

[6] The 1998 Approval Order specifically anticipated that FLEX trading may occur without the participation of a Specialist, stating that ''the Exchange also notes that there may not be a Specialist in FLEX options'' and that ''[a]t least two Exchange members (ROTs and/or a Specialist) shall be assigned to each FLEX option. If there is an assigned Specialist and an assigned ROT, the FLEX option will trade pursuant to the specialist system, just as non-FLEX options currently do on the Exchange. If, however, there is no assigned Specialist in a FLEX option, two assigned ROTs are required for that FLEX option to trade.'' If there were no assigned FLEX Specialist, the process for trading the FLEX option would unfold between and among the crowd participants, without involvement of an assigned FLEX Specialist, as described in Rule 1079. The Exchange notes that the 2013 Amendments also eliminated the rule previously found at Rule 1079(b)(5)(B) providing for the maintenance by a specialist of a FLEX book and governing trading with booked FLEX orders.

[7] Prior to the 2013 Amendments, former Rule 1079(b)(3) specifically provided that the Requesting Member was to determine the BBO if there were no assigned Specialist. The Exchange proposes to reinsert this language into Rule 1079(b)(3), for clarity.

[8] For example, the Exchange stated in the 2013 Amendments that it proposed to adopt rules, similar to Amex, which require a Requesting Member to submit to the FLEX Specialist an RFQ and that on receipt of an RFQ in proper form, the assigned FLEX Specialist shall cause the terms and specifications to be immediately announced at the post. The proposed rule change thus assumed the existence of a FLEX Specialist even though the FLEX rules at the time provided for FLEX trading without any FLEX Specialist.

[9] For the same reason, in the proposed amendments to Rule 1079(b)(1) the Exchange is using the term ''post'' rather than the term ''specialist post'' that was used in the Rule 1079(b)(1) language in place prior to the 2013 Amendments.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2016–107 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2016–107. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–Phlx–2016–107 and should be submitted on or before November 29, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Brent J. Fields,

Secretary.

[FR Doc. 2016–26907 Filed 11–7–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79220; File No. SR–ICC–2016–010]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change To Revise the ICC Risk Management Model Description Document and the ICC Risk Management Framework

November 2, 2016

I. Introduction

On July 15, 2016, ICE Clear Credit LLC (''ICC'') 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 revise the ICC Risk Management Framework to incorporate changes to the single name credit default swap (''CDS'') liquidity charge methodology and make additional minor, clarifying changes (SR–ICC–2016–010). The proposed rule change was published for comment in the **Federal Register** on August 4, 2016.[3] On September 15, 2016, the Commission extended the time period in which to either approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change to November 2, 2016.[4] The Commission did not receive comments on the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

ICC proposes revising the ICC Risk Management Framework to incorporate certain risk model enhancements related to its single name CDS liquidity charge methodology. ICC also proposes minor clarifying edits to the ICC Risk Management Model Description document and the ICC Risk Management Framework. These revisions do not require any changes to the ICC Clearing Rules.

Specifically, ICC proposes to introduce minimum instrument liquidity requirements independent of instrument maturities. ICC's current approach features instrument liquidity requirements that decay with time to maturity for fixed credit spread levels. The proposed approach introduces minimum liquidity requirements for individual instruments, independent of time to maturity for the considered instruments. ICC believes the proposal thus establishes minimum liquidity charges that do not decay over time as maturity is approached. The revised calculation for single name CDS liquidity charges at the instrument level will incorporate a price-based bid-offer width (''BOW'') floor component, which ICC asserts will provide stability of requirements, as well as a dynamic spread-based BOW component, which ICC asserts will reflect the additional risk associated with distressed market conditions. The values of such price-based BOW and spread-based BOW will be fixed factors, which will be subject to at least monthly reviews and updates by ICC Risk Management Department with consultation with the Risk Committee.

ICC also proposes enhancements to the liquidity charge calculation at the risk factor level. ICC's current risk factor level liquidity requirements are based on forward CDS spread levels. Under the revised calculation, liquidity charges at the risk factor level will be computed by first calculating the liquidity requirements for each individual instrument position in the portfolio, and then summing all instrument liquidity requirements for positions with the same directionality, *i.e.* bought or sold protection. The risk factor liquidity requirement will be the greatest liquidity requirement associated with either the sum of all bought protection position liquidity requirements, or the sum of all sold protection position liquidity requirements. ICC is not proposing any changes to the liquidity charge calculation at the portfolio level. ICC expects these enhancements will ensure more stable liquidity requirements for instruments across the curve and simplify ICC's liquidity charge methodology, which ICC believes should promote ease of understanding. In ICC's view, the current risk factor level liquidity requirements, based on forward CDS spread levels, are, in general, more difficult to replicate due

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 34–78448 (July 29, 2016), 81 FR 51532 (Aug. 4, 2016) (SR–ICC–2016–010).

[4] Securities Exchange Act Release No. 34–78846 (Sept. 15, 2016), 81 FR 64574 (Sept. 20, 2016) (SR–ICC–2016–010).

to the need for knowledge of spread levels across the entire term structure.

Additionally, to facilitate replication of the enhanced liquidity charge calculations, ICC will provide end-of-day data for instruments in which clients have open positions, allowing for additional transparency and easier replication for clients who wish to estimate liquidity charges for hypothetical and current positions.

ICC also proposes updating liquidity scaling factors to reflect the methodology enhancements. There is no price based component under the current methodology. To reflect the introduction of a price based component, the liquidity scaling factors will be decomposed and adjusted in order to maintain the same overall composition with both price and spread based components.

ICC has also proposed minor clarifying edits to the ICC Risk Management Framework and the ICC Risk Management Model Description document. ICC will add language to the Overview section of the Risk Management Framework to identify which ICC documents provide additional details regarding ICC's risk management approach. ICC will add language to the Governance and Organization section of the Risk Management Framework to note that the reporting line of ICC's Chief Risk Officer to the Chairperson of the ICC Risk Committee, who is also a non-executive manager on the Board, allows the Chief Risk Officer to bring any issues or concerns directly to the Board without intermediation by other ICC personnel. ICC will also make edits to the Governance and Organization section of the Risk Management Framework to revise the list of documents reviewed by the Risk Committee on at least an annual basis to include the ICC End-of-Day Price Discovery Policies and Procedures and the ICC Operational Risk Management Framework. Finally, ICC will add minor clarifying details to the technical calculation descriptions set forth in the ICC Risk Management Model Description document, specifically in the Recovery Rate Sensitivity Risk Analysis, Interest Rate Sensitivity Risk Analysis, Spread Risk Analysis, and Guaranty Fund Size Estimation sections.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act [5] directs the Commission to approve a proposed rule change of a self-regulatory organization if the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such self-regulatory organization. Section 17A(b)(3)(F) of the Act [6] requires, among other things, that the rules of a clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions and to comply with the provisions of the Act and the rules and regulations thereunder.

The Commission finds that the proposed rule change is consistent with the requirements of Section 17A of the Act [7] and the rules and regulations thereunder applicable to ICC. ICC asserts that the proposed change will simplify its initial margin methodology and lead to more stable initial margin requirements. The Commission believes that ICC's proposed revisions to the ICC Risk Management Framework and the ICC Risk Model Description Document, including the introduction of minimum liquidity requirements for the relevant instruments that do not decay over time and therefore are independent of instrument maturities, are reasonably designed to meet the margin and financial resource requirements of Rule 17Ad–22(b)(2–3).[8] In addition, the Commission believes that the revised methodology should assist market participants clearing or deciding whether to clear instruments through ICC to estimate liquidity charges for hypothetical and current positions. This enhancement in transparency is consistent with Rule 17Ad–22(d)(9),[9] which requires clearing agencies to establish, implement, maintain, and enforce policies and procedures reasonably designed to provide market participants with sufficient information for them to identify and evaluate the risks and costs associated with using its service.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act [10] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (File No. SR–ICC–2016–010) be, and hereby is, approved.[12]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Brent J. Fields,

Secretary.

[FR Doc. 2016–26906 Filed 11–7–16; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78s(b)(2)(C).

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78q–1.

[8] 17 CFR 240.17Ad–22(b)(2–3).

[9] 17 CFR 240.17Ad–22(d)(9).

[10] 15 U.S.C. 78q–1.

[11] 15 U.S.C. 78s(b)(2).

[12] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a closed meeting on Thursday, November 10, 2016, at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(7), (a)(9)(ii), and (a)(10), permit consideration of the scheduled matter at the closed meeting.

Chair White, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting will be:

Institution and settlement of administrative proceedings; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: November 3, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–27029 Filed 11–4–16; 11:15 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14911 and #14912]

North Carolina Disaster Number NC–00081

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 10.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of North Carolina (FEMA–4285–DR), dated 10/10/2016.

Incident: Hurricane Matthew.

Incident Period: 10/04/2016 and continuing.

Effective Date: 10/31/2016.

Physical Loan Application Deadline Date: 12/09/2016.

EIDL Loan Application Deadline Date: 07/10/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance,, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of North Carolina, dated 10/10/2016 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Brunswick, Halifax.

All counties contiguous to the above listed county have previously been declared.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2016–26886 Filed 11–7–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14936 and #14937]

Florida Disaster Number FL–00120

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Florida (FEMA–4283–DR), dated 10/24/2016.

Incident: Hurricane Matthew.

Incident Period: 10/03/2016 through 10/19/2016.

DATES: *Effective Date:* 10/27/2016.

Physical Loan Application Deadline Date: 12/23/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 07/24/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of FLORIDA, dated 10/24/2016, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Bradford, Lake, Seminole.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2016–26887 Filed 11–7–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14956 and #14957]

Iowa Disaster #IA–00069

AGENCY: U.S. Small Business Administration

ACTION: Notice

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Iowa (FEMA–4289–DR), dated 10/31/2016.

Incident: Severe Storms and Flooding.

Incident Period: 09/21/2016 through 10/03/2016.

Effective Date: 10/31/2016.

Physical Loan Application Deadline Date: 12/30/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 07/31/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 10/31/2016, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Allamakee, Benton, Black Hawk, Bremer, Buchanan, Butler, Cerro Gordo, Chickasaw, Clayton, Delaware, Des Moines, Fayette, Floyd, Franklin, Howard, Linn, Mitchell, Winneshiek, Wright.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere ...	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14956B and for economic injury is 14957B.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2016–26882 Filed 11–7–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14947 and #14948]

Wisconsin Disaster #WI–00055

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of WISCONSIN dated 10/31/2016.

Incident: Severe Storms and Flash Flooding.

Incident Period: 09/22/2016.

Effective Date: 10/31/2016.

Physical Loan Application Deadline Date: 12/30/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 07/31/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Vernon.

Contiguous Counties:

Wisconsin: Crawford, Juneau, La Crosse, Monroe, Richland, Sauk.

Iowa: Allamakee.

Minnesota: Houston.

The Interest Rates are:

	Percent
For Physical Damages:	
Homeowners with Credit Available Elsewhere	3.125
Homeowners without Credit Available Elsewhere	1.563
Businesses with Credit Available Elsewhere	6.250
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	2.625
Non-Profit Organizations without Credit Available Elsewhere	2.625
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14947 6 and for economic injury is 14948 0.

The States which received an EIDL Declaration # are Wisconsin, Iowa, Minnesota.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: October 31, 2016.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2016–26885 Filed 11–7–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14934 and #14935]

Georgia Disaster Number GA–00082

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of GEORGIA (FEMA–4284–DR), dated 10/20/2016.

Incident: Hurricane Matthew.

Incident Period: 10/04/2016 through 10/15/2016.

Effective Date: 10/27/2016.

Physical Loan Application Deadline Date: 12/19/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 07/20/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Georgia, dated 10/20/2016, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Ware.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2016–26884 Filed 11–7–16; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA 2016–0031]

Privacy Act of 1974, as Amended; Computer Matching Program (SSA/Law Enforcement Agency (Source Jurisdiction))—Match Number 5001

AGENCY: Social Security Administration (SSA).

ACTION: Notice of a renewal of an existing computer matching program that will expire on April 9, 2017.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a renewal of an existing computer matching program that we are currently conducting with Source Jurisdiction.

DATES: We will file a report of the subject matching program with the Committee on Homeland Security and Governmental Affairs of the Senate; the Committee on Oversight and Government Reform of the House of Representatives; and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefaxing to (410) 966–0869 or writing to the Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, 617 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the conditions under which computer matching involving the Federal government could be performed and adding certain protections for persons applying for, and receiving, Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such persons.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain approval of the matching agreement by the Data Integrity Boards of the participating Federal agencies;

(3) Publish notice of the computer matching program in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying a person's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of our computer matching programs comply with the requirements of the Privacy Act, as amended.

Glenn Sklar,

Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

Notice of Computer Matching Program, SSA with the Law Enforcement Agency (Source Jurisdiction)

A. Participating Agencies

SSA and Source Jurisdiction.

B. Purpose of the Matching Program

The purpose of this matching program is to establish the terms, conditions, and safeguards under which we will conduct a computer matching program with Source Jurisdiction in accordance with the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988 (5 U.S.C. 552a), and the regulations and guidance promulgated thereunder, to identify individuals in the Source Jurisdiction who are (1) fleeing fugitive felons, parole violators, or probation violators, as defined by the Social Security Act (Act) and in accordance with the Martinez Settlement and the Clark Court Order, as defined below; and who are also (2) Supplemental Security Income (SSI) recipients, Retirement, Survivors and Disability Insurance (RSDI) beneficiaries, Special Veterans Benefit (SVB) beneficiaries, or representative payees for SSI recipients, RSDI beneficiaries, or SVB beneficiaries.

C. Authority for Conducting the Matching Program

Sections 1611(e)(4)(A), 202(x)(l)(A)(iv) and (v), and 804(a)(2) and (3) of the Act (42 U.S.C. 1382(e)(4)(A), 402(x)(l)(A)(iv) and (v), and 1004(a)(2) and (3)) prohibit the payment of SSI, RSDI, or SVB benefits to an SSI recipient, RSDI beneficiary, or SVB beneficiary for any month during which such individual flees to avoid prosecution, or custody or confinement after conviction, under the applicable laws of the jurisdiction from which the person flees, for a crime or attempt to commit a crime considered to be a felony under the laws of said jurisdiction. These sections of the Act also prohibit payment of SSI, RSDI, or SVB benefits to a recipient/beneficiary in jurisdictions that do not define such crimes as felonies, but as crimes punishable by death or imprisonment for a term exceeding 1 year (regardless of the actual sentence imposed), and to an individual who violates a condition of probation or parole imposed under Federal or state law. As a result of a settlement of a nationwide class action in *Martinez* v. *Astrue,* No. 08–4735 (N.D. Cal. September 24, 2009) (Martinez Settlement), our nonpayment of benefits under these sections of the Act is limited to individuals with certain flight-coded or escape-coded warrants. Further, as a result of a settlement of a nationwide class action in *Clark* v. *Astrue,* 06 Civ. 15521 (S.D. NY, April 13, 2012) (Clark Court Order), our nonpayment of benefits under these sections of the Act cannot be based solely on the existence of parole or probation arrest warrants. Sections 1631(a)(2)(B)(iii)(V), 205(j)(2)(C)(i)(V), and 807(d)(1)(E) of the Act (42 U.S.C. 1383(a)(2)(B)(iii)(V), 405(j)(2)(C)(i)(V), 1007(d)(1)(E)), which prohibit us from using a person as a representative payee when such person is a person described in sections 1611(e)(4)(A), 202(x)(1)(A)(iv), or 804(a)(2) of the Act.

The legal authority for our disclosure of information to the Source Jurisdiction is: Sections 1106(a), 1611(e)(5), 1631(a)(2)(B)(xiv), 202(x)(3)(C), 205(j)(2)(B)(iii) and 807(b)(3) of the Act; the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988 (5 U.S.C. 552a(b)(3)); and our disclosure regulations promulgated at 20 CFR 401.150. The settlement terms in *Martinez* v. *Astrue* and *Clark* v. *Astrue* do not restrict this disclosure authority in any manner.

D. Categories of Records and Persons Covered by the Matching Program

The Source Jurisdiction will identify individuals who are fleeing fugitive felons, probation violators, or parole violators in its records originating from various databases. The Source Jurisdiction will prepare and disclose its records electronically (*e.g.,* Government to Government Services Online) with clear identification of the record source. We will match the following systems of records with the incoming Source Jurisdiction records to determine individuals who receive SSI, RSDI, SVB benefits, or individuals serving as representative payees: Supplemental Security Income Record and Special Veterans Benefits (SSR/SVB), 60–0103, published at 71 FR 1830 on January 11, 2006 and updated on December 10, 2007, published at 72 FR 69723; Master Beneficiary Record (MBR), SSA/ORSIS 60–0090, published at 71 FR 1826 on January 11, 2006 and updated on December 10, 2007 at 72 FR 69723 and on July 5, 2013 at 78 FR 40542; Master Representative Payee File, SSA/NCC 60–0222, published on April 22, 2013 (78 FR 23811); and, Master Files of Social Security Number Holders and SSN Applications, SSA/OTSO 60–0058, published on December 29, 2010 (75 FR 82121) and updated on July 5, 2013 (78 FR 40542) and February 13, 2014 (79 FR 8780). The Alphident file comes under this system of record.

The Source Jurisdiction will provide specific data elements for individuals as specified in Attachment A. Our Data Elements Matched: SSR/SVB and MBR: Individual's SSN and payment status; Master Files of SSN Holders and SSN Applications: Individual's name, date of birth, SSN, and gender; Master Representative Payee File: Individual's SSN and status as a representative payee.

The purpose of using the Alphident file under this agreement is to locate an individual's SSN by name search. We will use the Alphident file when the Source Jurisdiction either fails to provide an SSN or provides an incorrect SSN for the named individual. The Alphident file allows us to locate the SSN by utilizing electronic data systems currently available. We match the name and date of birth data received from the Source Jurisdiction against the Alphident file. If both sets of data match only one record in our file, we assume that the SSN associated with the matched name and date of birth belongs to the person named by the Source Jurisdiction. We then treat the individual whose SSN was generated through the Alphident search in the same manner as those individuals whose SSNs provided by the Source Jurisdiction matched our records. If the name of an individual matches with a single SSN in our records, we assume that the SSN associated with the matching record belongs to the individual in the Source Jurisdiction's records, even if the date of birth does not match. We then considers this a matched item.

E. Inclusive Dates of the Matching Program

The effective date of this matching program is April 10, 2017, provided that the following notice periods have lapsed: 30 days after publication of this notice in the **Federal Register** and 40 days after notice of the matching program is sent to Congress and OMB. The matching program will continue for

18 months from the effective date and, if both agencies meet certain conditions, it may extend for an additional 12 months thereafter.

[FR Doc. 2016–26862 Filed 11–7–16; 8:45 am]

BILLING CODE 4191–02–P

SURFACE TRANSPORTATION BOARD

30-Day Notice of Intent To Seek Extension of Approval: Class I Railroad Annual Report

AGENCY: Surface Transportation Board.

ACTION: Notice and request for comments.

SUMMARY: As required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–21 (PRA), the Surface Transportation Board (STB or Board) gives notice of its intent to seek approval from the Office of Management and Budget (OMB) for an extension of the collection of Class I Railroad Annual Reports, described below. The Board previously published a notice about this collection in the **Federal Register**. 81 FR 47486 (July 21, 2016). That notice allowed for a 60-day public review and comment period. No comments were received.

DATES: Comments on this information collection should be submitted by December 8, 2016.

ADDRESSES: Written comments should be identified as ''Paperwork Reduction Act Comments, Surface Transportation Board: Class I Railroad Annual Report.'' These comments should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Chandana L. Achanta, Surface Transportation Board Desk Officer, by email at *OIRA_SUBMISSION@OMB.EOP.GOV;* by fax at (202) 395–6974; or by mail to Room 10235, 725 17th Street NW., Washington, DC 20503. Please also direct comments to Chris Oehrle, Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001, or to *PRA@stb.gov.*

FOR FURTHER INFORMATION CONTACT: For further information regarding this collection, contact Pedro Ramirez at (202) 245–0333 or at *pedro.ramirez@stb.gov.* [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Comments are requested concerning: (1) The accuracy of the Board's burden estimates; (2) ways to enhance the quality, utility, and clarity of the information collected; (3) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate; and (4) whether the collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility. Submitted comments will be summarized and included in the Board's request for OMB approval.

Description of Collection

Title: Class I Railroad Annual Report.
OMB Control Number: 2140–0009.
Form Number: R–1.
Type of Review: Extension without change.
Respondents: Class I railroads.
Number of Respondents: Seven.
Estimated Time per Response: No more than 800 hours. This estimate includes time spent reviewing instructions; searching existing data sources; gathering and maintaining the data needed; completing and reviewing the collection of information; and converting the data from the carrier's individual accounting system to the Board's Uniform System of Accounts (USOA), which ensures that the information will be presented in a consistent format across all reporting railroads. *See* 49 U.S.C. 11141–43, 11161–64; 49 CFR 1200–01.
Frequency of Response: Annual.
Total Annual Hour Burden: No more than 5,600 hours annually.
Total Annual ''Non-Hour Burden'' Cost: No ''non-hour cost'' burdens associated with this collection have been identified. The information is submitted electronically.
Needs and Uses: Annual reports are required to be filed by Class I railroads under 49 U.S.C. 11145. The reports show operating expenses and operating statistics of the carriers. Operating expenses include costs for right-of-way and structures, equipment, train and yard operations, and general and administrative expenses. Operating statistics include such items as car-miles, revenue-ton-miles, and gross ton-miles. The reports are used by the Board, other Federal agencies, and industry groups to monitor and assess railroad industry growth, financial stability, traffic, and operations, and to identify industry changes that may affect national transportation policy. Information from this report is also entered into the Board's Uniform Rail Costing System (URCS), which is a cost measurement methodology. URCS, which was developed by the Board pursuant to 49 U.S.C. 11161, is used as a tool in rail rate proceedings (in accordance with 49 U.S.C. 10707(d)) to calculate the variable costs associated with providing a particular service. The Board also uses this information to more effectively carry out other regulatory responsibilities, including: Acting on railroad requests for authority to engage in Board-regulated financial transactions such as mergers, acquisitions of control, and consolidations, *see* 49 U.S.C. 11323–24; analyzing the information that the Board obtains through the annual railroad industry waybill sample, *see* 49 CFR 1244; measuring off-branch costs in railroad abandonment proceedings, in accordance with 49 CFR 1152.32(n); developing the ''rail cost adjustment factors,'' in accordance with 49 U.S.C. 10708; and conducting investigations and rulemakings.

Under the PRA, a federal agency that conducts or sponsors a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Under 44 U.S.C. 3506(c)(2)(A), federal agencies are required to provide, prior to an agency's submitting a collection to OMB for approval, a 60-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Information from certain schedules contained in these reports is compiled and published on the Board's Web site, *www.stb.gov.* Information in these reports is not available from any other source.

Dated: November 2, 2016.

Brendetta S. Jones,

Clearance Clerk.

[FR Doc. 2016–26926 Filed 11–7–16; 8:45 am]

BILLING CODE 4915–01–P

TENNESSEE VALLEY AUTHORITY

[Meeting No. 16–04]

Sunshine Act Meeting Notice

The TVA Board of Directors will hold a public meeting on November 10, 2016, at the Union County Schools Fine Arts Center, 926 Panther Overlook, Blairsville, Georgia. The public may comment on any agenda item or subject at a public listening session which begins at 8:30 a.m. (ET). Following the end of the public listening session, the meeting will be called to order to

consider the agenda items listed below. On-site registration will be available until 15 minutes before the public listening session begins at 8:30 a.m. (ET). Preregistered speakers will address the Board first. TVA management will answer questions from the news media following the Board meeting.

Status: Open.

Agenda

Chair's Welcome

Old Business

Approval of minutes of the August 25, 2016, Board Meeting

New Business

1. Report from President and CEO
2. Report of the Finance, Rates, and Portfolio Committee
   A. Financial Performance Update
   B. Section 13 Tax Equivalent Payments
3. Report of the People and Performance Committee
   A. Fiscal Year 2016 Performance and Compensation
   B. CEO Compensation for Fiscal Year 2017
   C. Long-term Service Agreements at Paradise and Allen
4. Report of the Audit, Risk, and Regulation Committee
5. Report of the Nuclear Oversight Committee
6. Report of the External Relations Committee
   A. Charter Revision
   B. Board Practice on External Memberships

For more information: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: November 3, 2016.

Sherry A. Quirk,

General Counsel.

[FR Doc. 2016–27044 Filed 11–4–16; 11:15 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Program Management Committee Meeting

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

ACTION: RTCA Program Management Committee Meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Program Management Committee Meeting.

DATES: The meeting will be held December 15, 2016 08:30 a.m.–04:30 p.m.

ADDRESSES: The meeting will be held at: RTCA Headquarters, 1150 18th Street NW., Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Karan Hofmann at *khofmann@rtca.org* or 202–330–0680, or The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of the RTCA Program Management Committee. The agenda will include the following:

Thursday, December 15, 2016—8:30 a.m.–4:30 p.m.

1. Welcome and Introductions
2. Review/Approve
   A. Meeting Summary September 22, 2016
   B. Administrative Special Committee TOR Revisions
3. Publication Consideration/Approval
   A. Final Draft, New Document—*Minimum Aviation System Performance Standards for Aeronautical Information/Meteorological Data Link Services,* prepared by SC–206
   B. Final Draft, New Document—*Guidance for the Development of Portable Electronic Devices (PED) Tolerance for Civil Aircraft,* prepared by SC–234
   C. Final Draft, Revised Document, DO–307—*Aircraft Design and Certification for Portable Electronic Device (PED) Tolerance,* prepared by SC–234
   D. Final Draft, Revision to DO–343—*Minimum Aviation System Performance Standard for AMS(R)S Data and Voice Communications Supporting Required Communications Performance (RCP) and Required Surveillance Performance (RSP) in Procedural Airspace,* prepared by SC–222
   E. Final Draft, New Document—*Detect and Avoid Minimum Operational Performance Standards Phase I (DAA MOPS),* prepared by SC–228
   F. Final Draft, New Document—*Minimum Operational Performance Standards (MOPS) for Air-to-Air Radar Detect and Avoid (DAA) Systems Phase 1,* prepared by SC–228
   G. Final Draft, Revision to DO–229D with Change 1- *Minimum Operational Performance Standards for Global Positioning System/Satellite-Based Augmentation System Airborne Equipment,* prepared by SC–159
4. Integration and Coordination Committee (ICC)
   A. Suggested Changes to MOPS/MASPS Drafting Guides—Update
5. Past Action Item Review
   A. Boeing/ARINC Winds Work Update—Presentation
   B. Cross Cutting Committee Membership—Update
   C. EUROCAE Harmonization Work with SC–223 and WG–82—Update
   D. PBN, Speed, Spacing Task Group Final Report—Presentation
   E. Response to Transportation Safety Board of Canada Letter—Update
6. Discussion
   A. SC–159—Navigation Equipment Using the Global Positioning System—Discussion—Ligado Letter
   B. SC–159—Navigation Equipment Using the Global Positioning System—Discussion—Revised TOR
   C. SC–206—Aeronautical Information Services (AIS) and Meteorological Data Link Services—Discussion—Revised TOR
   D. SC–225—Rechargeable Lithium Batteries and Battery Systems—Discussion—Update on DO–311 Revision
   E. SC–213—Enhanced Flight Vision Systems/Synthetic Vision Systems—Discussion—Revised TOR
   F. SC–223—Internet Protocol Suite (IPS) and Aeronautical Mobile Airport Communication System—Discussion—Revised TOR
   G. NAC—Status Update
   H. TOC—Status Update
   I. DAC—Status Update
   J. FAA Actions Taken on Previously Published Documents—Report
   K. Special Committees—Chairmen's Reports and Active Inter-Special Committee Requirements Agreements (ISRA)—Review
   L. European/EUROCAE Coordination—Status Update
7. Other Business
8. Schedule for Committee Deliverables and Next Meeting Date
9. New Action Item Summary

Attendance is open to the interested public but limited to space availability. With the approval of the chairman,

members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC on November 3, 2016.

Mohannad Dawoud,

Management & Program Analyst, Partnership Contracts Branch, ANG–A17, NextGen, Procurement Services Division, Federal Aviation Administration.

[FR Doc. 2016–26954 Filed 11–7–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2016–0002]

RIN 2125–AF70

Tribal Transportation Self-Governance Program; Negotiated Rulemaking Meetings

AGENCY: Federal Highway Administration, DOT.

ACTION: Notice of meetings.

SUMMARY: This document announces meetings four and five of the Tribal Transportation Self-Governance Program (TTSPG) Negotiated Rulemaking Committee.

Dates and Addresses: All meetings are scheduled to take place from 8:00 a.m. until 5 p.m. on the following dates and locations:

—Meeting 4—November 15–17, 2016, Embassy Suites Minneapolis Airport, 7901 34th Ave South, Bloomington, MN 55425

—Meeting 5—December 6–8, 2016, Wind Creek Atmore, 303 Poarch Rd., Atmore, AL 36502

FOR FURTHER INFORMATION CONTACT: Robert W. Sparrow, Designated Federal Official, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: (202) 366–9483 or at *robert.sparrow@dot.gov.* Vivian Philbin, Assistant Chief Counsel, 12300 West Dakota Avenue, Lakewood, CO 80228. Telephone: (720) 963–3445 or at *vivian.philbin@dot.gov.* Additional information may be posted on the FHWA Tribal Transportation Program Web site at *https://flh.fhwa.dot.gov/programs/ttp/* as it comes available.

SUPPLEMENTARY INFORMATION:

Meeting Participation

These meetings will be open to the public. Time has been set aside during each day of the meetings for members of the public to contribute to the discussion and provide oral comments.

Submitting Written Comments

Members of the public may submit written comments on the topics to be considered during the meetings no less than 2 business days before each of the above scheduled meetings, to Federal Docket Management System (FDMS) Docket Number FHWA–2016–0002. If you submit a comment, please include the docket number for this notice (FHWA–2016–0002). You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. The FHWA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FHWA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,*put the docket number, FHWA–2016–0002, in the keyword box, and click ''Search.'' When the new screen appears, click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8 1/2 by 11 inches, suitable for copying and electronic filing.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov.* Insert the docket number, FHWA–2016–0002, in the keyword box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays.

Privacy Act

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

Future Committee Meetings and Rulemaking Calendar

Decisions with respect to future meeting dates and locations will be made at each meeting and from time to time thereafter. Notices of all future meetings will be shown on the FHWA TTSGP Web site at *https://flh.fhwa.dot.gov/programs/ttp/ttsgp/* at least 15 calendar days prior to each meeting.

Issued on: October 31, 2016.

Gregory G. Nadeau,

Administrator, Federal Highway Administration.

[FR Doc. 2016–26918 Filed 11–7–16; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2016–0128]

Pipeline Safety: Voluntary Information-Sharing System Working Group Nominations

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Request for member nominations; voluntary information-sharing system working group.

SUMMARY: PHMSA is seeking nominations for individuals to serve as members for three-year terms on the Voluntary Information-Sharing System (VIS) Working Group. This is a newly created working group established in accordance with section 10 of the Protecting our Infrastructure of Pipelines and Enhancing Safety (PIPES) Act of 2016 (Pub. L. 114–183), the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., App. 2, as amended), and 41 CFR 102–3.50(a). The Secretary of Transportation (Secretary) must convene a working group by December 19, 2016 to consider the development of a voluntary information-sharing system to encourage collaborative efforts to improve inspection information feedback and information sharing with the purpose of improving gas transmission and hazardous liquid pipeline facility integrity risk analysis. PHMSA intends to comply with section 10 of the PIPES Act of 2016 by convening a working group by December 19, 2016.

DATES: Nominations must be received on or before November 28, 2016.

ADDRESSES: All nomination material should be emailed to the Advisory Committee Program Manager Cheryl Whetsel at *Cheryl.whetsel@dot.gov* or mailed to the Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE., PHP–30, E24–445, Washington, DC 20590, to the attention of Cheryl Whetsel, Advisory Committee Program Manager, PHP–30.

FOR FURTHER INFORMATION CONTACT: Cheryl Whetsel at 202–366–4431 or *Cheryl.whetsel@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Duties

The VIS Working Group will consider and provide recommendations to the Secretary as specifically outlined in section 10 of the PIPES Act of 2016:

(a) The need for, and the identification of, a system to ensure that dig verification data are shared with in-line inspection operators to the extent consistent with the need to maintain proprietary and security-sensitive data in a confidential manner to improve pipeline safety and inspection technology;

(b) Ways to encourage the exchange of pipeline inspection information and the development of advanced pipeline inspection technologies and enhanced risk analysis;

(c) Opportunities to share data, including dig verification data between operators of pipeline facilities and in-line inspector vendors to expand knowledge of the advantages and disadvantages of the different types of in-line inspection technology and methodologies;

(d) Options to create a secure system that protects proprietary data while encouraging the exchange of pipeline inspection information and the development of advanced pipeline inspection technologies and enhanced risk analysis;

(e) Means and best practices for the protection of safety- and security-sensitive information and proprietary information; and

(f) Regulatory, funding, and legal barriers to sharing the information described in paragraphs (a) through (d).

The Secretary must publish the VIS Working Group's recommendations on a publicly available Department of Transportation Web site. The VIS Working Group will fulfill its purpose once its recommendations are published online.

II. Membership

The VIS Working Group will consist of no more than 30 members appointed by the Secretary, including representatives from:

(a) PHMSA;

(b) Industry stakeholders, including:

- Operators of pipeline facilities,
- Inspection technology, coating, and cathodic protection vendors, and
- Pipeline inspection organizations;

(c) Safety advocacy groups;

(d) Research institutions;

(e) State public utility commissions or State officials responsible for pipeline safety oversight;

(f) State pipeline safety inspectors;

(g) Labor representatives; and

(h) Other entities, as determined appropriate by the Secretary.

III. Terms of Service

- Each member serves a three-year term unless the member becomes unable to serve, resigns, ceases to be qualified to serve, is removed by the Secretary, or if the VIS Working Group fulfills its purpose before the term ends. The Secretary may reappoint a member to serve additional terms.
- All Group members must be able to attend approximately four meetings each year in Washington, DC, other designated locations, or by teleconference.
- Members serve without compensation although travel expenses, including per diem, may be reimbursed for those performing committee duties away from their homes and regular places of business.
- A member appointed for his or her individual views or advice must be appointed as a Special Government Employee (SGE). Other members will serve as Representatives or Regular Government Employees. SGEs are subject to certain Federal conflict of interest laws.

IV. Nomination Procedures

Any interested person may nominate one or more qualified individuals for membership on the VIS Working Group. Self-nominations are also accepted. The PHMSA Administrator, on behalf of the Secretary, is seeking individuals with diverse experiences and expertise in research and development, academia, human factors, large scale data management, standards for data exchanges, secure information sharing, risk management and risk analysis, natural gas or hazardous liquid pipeline safety, in-line inspection, pipeline anomaly assessment and remediation, pipeline inspection technology, software system development, integrity management, or other related experience.

- Nominations must include a current, complete résumé including business address and home address, telephone number, email address, education, professional or business experience, present occupation, and membership on other working groups or advisory committees, past or present.
- Nominations must include a short biography identifying each nominee's qualifications and expertise.
- Nominations for non-industry positions on the VIS Working Group should highlight relevant experience on panels that dealt with transportation safety, information-sharing systems, technology development, data management, software development, or detail their interest in the subject matter that will be considered by the committee.
- Nominations must acknowledge that the nominee is aware of the nomination unless self-nominated.

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. 2016–26905 Filed 11–7–16; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0539]

Agency Information Collection Activity Under OMB Review (Application for Supplemental Service Disabled Veterans Insurance)

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 8, 2016.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB

Control No. 2900–0539'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov.* Please refer to ''OMB Control No. 2900–0539.''

SUPPLEMENTARY INFORMATION:

Title: Application for Supplemental Service Disabled Veterans Insurance VA Forms 29–0188 and 29–0189.

OMB Control Number: 2900–0539.

Type of Review: Extension of a currently approved collection.

Abstract: VA Forms 29–0188 and 29–0189 are used by eligible insureds to apply for Supplemental Service Disabled Veterans Insurance. Collection of the requested information is required to implement the provisions of Public Law 102–568 which expanded the insurance coverage available under 38 U.S.C. Section 1922. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published September 1, 2016, 81 FR 60414.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,333 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 10,000.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Program Specialist, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–26909 Filed 11–7–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee: National Academic Affiliations Council Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2 that a meeting of the National Academic Affiliations Council will be held November 29, 2016—November 30, 2016 in the VA Boston Healthcare System's Barsamian Auditorium, Room 3C–108–1, 1400 VFW Parkway, West Roxbury, MA 02132. The November 29, 2016 session will begin at 9:00 a.m. and end at 4:30 p.m. The November 30, 2016 session will begin at 9 a.m. and adjourn at 11:45 a.m. The meeting is open to the public, except when the Council is conducting tours of the VA facility. Tours of VA facilities are closed to the public, to protect Veterans' privacy and personal information, in accordance with 5 U.S.C. 552b(c)(6).

The purpose of the Council is to advise the Secretary on matters affecting partnerships between VA and its academic affiliates.

On November 29, 2016, the Council will receive updates on VA's educational portfolio and patient aligned care team (PACT) concept. Following these presentations, the Council will convene in a closed session, as it tours the VA Boston Healthcare System's West Roxbury campus. The Council will reconvene in open session to host a town hall style event focused on PACT implementation. The town hall meeting will begin at 11:15 a.m. and end promptly at 12:15 p.m. Additional agenda items include a discussion on VA's efforts to implement innovative academic relationships and collaboration, an overview of the VA National Nursing Academy, and a presentation on the Northeast Region VA Nursing Alliance. On November 30, 2016, the Council will receive an update on the graduate medical education expansion initiative authorized under Public Law 113–146 and host a faculty development showcase sponsored by the VA Boston Healthcare System. The Council will receive public comments from 4:15 p.m. to 4:30 p.m. on November 29, 2016 and again from 11:30 a.m. to 11:45 a.m. on November 30, 2016.

Interested persons may attend and present oral statements to the Council. A sign-in sheet for those who want to give comments will be available at the meeting. Individuals who speak are invited to submit a 1–2 page summary of their comments at the time of the meeting for inclusion in the official meeting record. Oral presentations will be limited to five minutes or less, depending on the number of participants. Interested parties may also provide written comments for review by the Council prior to the meeting or at any time, by email to, *Steve.Trynosky@va.gov* , or by mail to Stephen K. Trynosky JD, MPH, MMAS, Designated Federal Officer, Office of Academic Affiliations (10A2D), 810 Vermont Avenue NW Washington, DC 20420. Any member of the public wishing to attend or seeking additional information should contact Mr. Trynosky via email or by phone at (202) 461–6723. Because the meeting will be in a Government building, anyone attending must be prepared to show a valid photo I.D. Please allow 15 minutes before the meeting begins for this process.

Dated: November 3, 2016.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2016–26953 Filed 11–7–16; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 81 Tuesday,

No. 216 November 8, 2016

Part II

Environmental Protection Agency

40 CFR Parts 52 and 81

Clean Air Act Redesignation Substitute for the Dallas-Fort Worth 1-Hour Ozone and 1997 8-Hour Ozone Nonattainment Areas; Texas; Clean Air Act Redesignation Substitute for the Houston-Galveston-Brazoria 1997 8-Hour Ozone Nonattainment Area; Texas; Final Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R06–OAR–2015–0721; FRL–9953–93–Region 6]

Clean Air Act Redesignation Substitute for the Dallas-Fort Worth 1-Hour Ozone and 1997 8-Hour Ozone Nonattainment Areas; Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a redesignation substitute and making finding of attainment for both the revoked 1-hour and the revoked 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS) for the Dallas-Fort Worth ozone nonattainment areas (DFW area).

DATES: This rule is effective on December 8, 2016.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2015–0721. 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 or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Tracie Donaldson, 214–665–6633, *Donaldson.tracie@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' means the EPA.

I. Background

The background for this action is discussed in detail in our May 25, 2016 proposal (81 FR 33161). In that document we proposed to approve a redesignation substitute and make a finding of attainment for both the 1-hour and the 1997 8-hour ozone NAAQS for the Dallas-Fort Worth 1-hour and 1997 8-hour ozone nonattainment areas (DFW areas). The redesignation substitute demonstration indicates that the area has attained the revoked 1-hour and the revoked 1997 8-hour ozone NAAQS due to permanent and enforceable emission reductions and that it will maintain those NAAQS for ten years from the date of the EPA's approval of this demonstration. Final approval of the redesignation substitute results in the area no longer being subject to any remaining applicable anti-backsliding requirements, including nonattainment new source review associated with the revoked NAAQS. In general, final approval of the redesignation substitute allows Texas to seek to revise the Texas State Implementation Plan (SIP) for the area to remove anti-backsliding measures from the active portion of its SIP if it can demonstrate, pursuant to CAA section 110(1), that such revision would not interfere with attainment or maintenance of any applicable NAAQS, or any other requirement of the CAA. Because the EPA believes Texas does not need to revise its SIP to alter certain provisions for NNSR effective in the DFW area, the offset and threshold requirements applicable in the DFW area for NNSR will be automatically altered upon finalization of the redesignation substitute.

We received comments on the proposal from three commenters. Our response to the comments is below.

II. Response to Comments

Comment: Two commenters recognized the progress of the area and the work of TCEQ in making such significant air quality improvements in the DFW area and urged the EPA to finalize this action to reflect the changes in the area.

Response: We agree with the commenters that DFW area has made progress in meeting air quality standards. No changes were made to the final action based on these comments.

Comment: One of the supportive commenters urged the EPA to approve revisions to the Texas SIP to reflect changes to certain provisions for the NNSR program effective in the DFW area as a result of the EPA's approval of the redesignation substitute. The commenter also asserted that approval of the redesignation substitute will result in the area no longer being subject to any remaining applicable anti-backsliding requirements.

Response: Due to the drafting of the Texas SIP, no revision is necessary to alter NNSR requirements applicable in the DFW area following finalization of this redesignation substitute. The NNSR provisions in the existing Texas SIP contains a provision that cross-references the designation of the area to 40 CFR part 81. See 30 TAC section 101.1(71). Because of the structure of this provision the identification of an area's classification, and thus the related major source thresholds and offset ratios, is updated without any additional revision to the SIP. Therefore, the EPA's approval of the redesignation substitute automatically updates the applicable NNSR requirements. Following finalization of this rule, the NNSR requirements applicable in the DFW area will be in accordance with the DFW area's current classification for the 2008 ozone NAAQS for newly permitted sources.[1] We note that approval of this redesignation substitute does not relieve sources in the area of their obligations under previously established permit conditions.[2] 81 FR 33161, 33165. The Texas SIP includes a suite of approved permitting regulations for the Minor and Major NSR, which will continue to apply after approval of the redesignation substitute in the DFW area. Each of these programs has been evaluated and approved by EPA as consistent with the requirements of the CAA and protective of air quality, including the requirements at 40 CFR 51.160 whereby the TCEQ cannot issue a permit or authorize an activity that will result in a violation of applicable portions of the control strategy or that will interfere with attainment or maintenance of a national standard. So moving forward to a time when the DFW area has a moderate designation as the only applicable nonattainment designation, new sources and modifications will continue to be permitted and authorized under the existing SIP requirements if they are determined to be protective of air quality.

The EPA agrees that approval of the redesignation substitute will result in the DFW area no longer being subject to the regulatory anti-backsliding requirements for the 1997 ozone standard established pursuant to the principles of CAA section 172(e). However if an anti-backsliding provision is in the Texas SIP and needs to be changed to reflect the change in this area's status, such change is subject to the SIP revision process, which in turn is subject to review under CAA sections 110 and 193, if applicable. To date, Texas has not submitted a SIP revision concerning any anti-backsliding provisions for the EPA's consideration.

Comment: One commenter objected to the use of the redesignation substitute mechanism and the implications of such an action. The commenter incorporates

[1] *See* Section D of the TSD for this action in the docket for this rulemaking for additional information.

[2] *See* Final Implementation Rule for 2008 Ozone Standard, 80 FR 12264, at 12299, footnote 83 and at 12304, footnote 91.

by reference the relevant portions of a brief filed in a petition challenging the EPA's promulgation of the redesignation substitute. *See South Coast Air Quality Mgmt. Dist.* v. *EPA,* No. 15–1115 (D.C. Cir.). They contend that the DFW area continues to have unhealthy levels of ozone pollution, therefore, raising the NNSR thresholds and lowering the offset requirements for the area is inappropriate. The commenter further states that our action will result ''in great expense and inefficiency: because some sources will not prevent pollution, they and other sources may have to retrofit at greater expense.'' The commenter asks the EPA to either disapprove the redesignation substitute or delay action until the underlying litigation is resolved.

Response: The EPA disagrees with the commenter that it is inappropriate to approve redesignation substitutes for the DFW area for the 1-hour and the 1997 8-hour ozone standards. As the commenter noted, the EPA created the redesignation substitute in the 2008 ozone SIP Requirements Rule as one of two acceptable procedures through which a state may demonstrate that it is no longer required to adopt any additional applicable requirements for an area which have not already been approved into the SIP for a revoked ozone NAAQS. 80 FR 12264, 12304 (March 6, 2015).

The EPA acknowledges that this rule has been challenged in the D.C. Circuit by the commenter. However, the rule has not been stayed pending resolution of the litigation, and as such, it is appropriate to continue to implement the 2008 ozone SIP Requirements Rule during the pendency of the litigation.

The EPA believes the redesignation substitute is an appropriate mechanism because it serves as a successor to a redesignation to attainment, for which these areas would have been eligible if the EPA had not revoked the 1-hour and 1997 ozone standards. For a more detailed description of why the EPA has determined the DFW area has met the redesignation criteria for the revoked 1997 ozone standard, see 81 FR 33161 for the proposal and Technical Support Document. Upon approval of a redesignation substitute, a state may request to revise its SIP to shift regulatory anti-backsliding requirements contained in the active portion of the SIP to the contingency measures portion of the SIP, subject to a showing of consistency with the general anti-backsliding checks in CAA sections 110(l) and 193 (if applicable). The EPA approval of the redesignation substitute has the same effect on these areas' nonattainment regulatory anti-backsliding requirements as would a redesignation to attainment for the revoked standard. The EPA believes that, under any view of anti-backsliding for a revoked standard, it should not mean imposing requirements greater than those that would apply if the standard had not been revoked.

An approvable redesignation substitute must include more than a determination of attainment of the prior NAAQS, and show that it addresses redesignation criteria for that NAAQS. Moreover, the state remains subject to ongoing requirements to meet the new more stringent 2008 ozone standard in that area. In this context, the EPA believes finalizing of this action is appropriate—it recognizes and supports Texas's progress in having attained the prior standards in the DFW area due to permanent and enforceable emissions reductions, and reinforces continued attainment by demonstrating that the DFW area can maintain the revoked standard. See 80 FR 12264, 12305.

III. Final Action

We find that Texas has successfully demonstrated it has met the requirements for approval of a redesignation substitute for the revoked 1-hour and the revoked 1997 8-hour ozone NAAQS for the DFW area. We are approving the redesignation substitute for the DFW area based on our determination that the demonstration provided by the State of Texas shows that the DFW area has attained the revoked 1-hour and the revoked 1997 8-hour ozone NAAQS due to permanent and enforceable emission reductions, and that it will maintain these NAAQS for ten years from the date of the EPA's approval of this demonstration. As we no longer redesignate nonattainment areas to attainment for the revoked 1-hour and the revoked 1997 8-hour ozone NAAQS, approval of the demonstration serves as a redesignation substitute under the EPA's implementing regulations. As a result of this action, Texas is no longer required to adopt any additional applicable 1-hour and 1997 8-hour ozone NAAQS requirements for the area which have not already been approved into the SIP (40 CFR 51.1105(b)(1)). It also allows the state to request that the EPA approve the shifting of planning and control requirements implemented pursuant to the 1-hour and the 1997 8-hour ozone NAAQS from the active portion of the SIP to the contingency measures portion of the SIP, upon a showing of consistency with CAA sections 110(l) and 193 (if applicable) (40 CFR 51.1105(b)(2)).

IV. Statutory and Executive Order Reviews

Under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves a demonstration provided by the State of Texas and finds that the DFW area is no longer subject to the regulatory anti-backsliding requirements under the principles of CAA section 172(e) for the revoked 1-hour ozone and the revoked 1997 8-hour ozone NAAQS; and imposes no additional requirements. Accordingly, I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule does not impose any additional enforceable duties, it 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). This rule also does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a demonstration provided by the State of Texas and find that the DFW area is no longer subject to the regulatory anti-backsliding requirements under the principles of CAA section 172(e) for the revoked 1-hour ozone and the revoked 1997 8-hour ozone NAAQS; and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

The rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Additionally, this rule does not involve establishment of technical standards, and thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. The EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment.

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 9, 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

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control.

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

Dated: October 27, 2016.

Samuel Coleman,

Acting Regional Administrator, Region 6.

40 CFR parts 52 and 81 are 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 SS—Texas

■ 2. Section 52.2275 is amended by adding paragraph (m) to read as follows:

§ 52.2275 Control strategy and regulations: Ozone.

* * * * *

(m) *Approval of Redesignation Substitute for the Dallas-Fort Worth 1-hour Ozone and 1997 Ozone Nonattainment Areas.* EPA has approved the redesignation substitute for the Dallas-Fort Worth 1-hour ozone and 1997 ozone nonattainment areas submitted by the State of Texas on August 18, 2015. The State is no longer being required to adopt any additional applicable to 1-hour ozone and 1997 ozone NAAQS requirements for the area.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 3. The authority citation for part 81 continues to read as follows:

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

■ 4. Section 81.344 is amended:

■ a. In the table entitled ''Texas—Ozone (1-Hour Standard)'' by revising the entries for ''Dallas-Fort Worth Area'' and adding footnote 3; and

■ b. In the table titled ''Texas—1997 8-Hour Ozone NAAQS (Primary and Secondary)'' by revising the entries for ''Dallas-Fort Worth, TX'' and adding footnotes 5 and 6.

The revisions and additions read as follows:

§ 81.344 Texas.

* * * * *

TEXAS—OZONE [2]

[1-Hour standard]

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * *	*	*	*	*
Dallas-Fort Worth Area:				
Collin County [3]	11/15/90	Nonattainment	3/20/98	Serious.
Dallas County [3]	11/15/90	Nonattainment	3/20/98	Serious.
Denton County [3]	11/15/90	Nonattainment	3/20/98	Serious.
Tarrant County [3]	11/15/90	Nonattainment	3/20/98	Serious.
* * *	*	*	*	*

[1] This date is October 18, 2000, unless otherwise noted.

[2] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in Texas except the San Antonio area where it is revoked effective April 15, 2009.

[3] A Redesignation Substitute was approved on November 8, 2016.

* * * * *

TEXAS—1997 8-HOUR OZONE NAAQS

[Primary and secondary]

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
* * *	*	*	*	*
Dallas-Fort Worth, TX:				
Collin County [5 6]		Nonattainment	(5)	Subpart 2/Serious.
Dallas County [5 6]		Nonattainment	(5)	Subpart 2/Serious.
Denton County [5 6]		Nonattainment	(5)	Subpart 2/Serious.
Ellis County [5 6]		Nonattainment	(5)	Subpart 2/Serious.
Johnson County [5 6]		Nonattainment	(5)	Subpart 2/Serious.
Kaufman County [5 6]		Nonattainment	(5)	Subpart 2/Serious.
Parker County [5 6]		Nonattainment	(5)	Subpart 2/Serious.
Rockwall County [5 6]		Nonattainment	(5)	Subpart 2/Serious.
Tarrant County [5 6]		Nonattainment	(5)	Subpart 2/Serious.
* * *	*	*	*	*

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.
* * * * * * *
[5] Effective January 19, 2011.
[6] A Redesignation Substitute was approved on November 8, 2016.

* * * * *

[FR Doc. 2016–26585 Filed 11–7–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R06–OAR–2015–0609; FRL–9953–89–Region 6]

Clean Air Act Redesignation Substitute for the Houston-Galveston-Brazoria 1997 8-Hour Ozone Nonattainment Area; Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a redesignation substitute and making a finding of attainment for the revoked 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS) for the Houston-Galveston-Brazoria ozone nonattainment area (HGB area).

DATES: This rule is effective on December 8, 2016.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2015–0609. 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 or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Tracie Donaldson, 214–665–6633, *Donaldson.tracie@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' means the EPA.

I. Background

The background for this action is discussed in detail in our May 25, 2016 proposal (81 FR 33166). In that document we proposed to approve a redesignation substitute and make a finding of attainment for the 1997 8-hour ozone NAAQS for the Houston-Galveston-Brazoria ozone nonattainment area (HGB area). The redesignation substitute demonstration indicates that the area has attained the revoked 1997 8-hour ozone NAAQS due to permanent and enforceable emission reductions and that it will maintain that NAAQS for ten years from the date of the EPA's approval of this demonstration. Final approval of the redesignation substitute results in the area no longer being subject to any remaining applicable anti-backsliding requirements, including nonattainment new source review, associated with the revoked NAAQS. In general, final approval of the redesignation substitute allows Texas to seek to revise the Texas SIP for the area to remove anti-backsliding measures from the active portion of its SIP if it can demonstrate, pursuant to CAA section 110(1), that such revision would not interfere with attainment or maintenance of any applicable NAAQS, or any other requirement of the CAA. Because the EPA believes Texas does not need to revise its SIP to alter certain provisions for NNSR effective in the HGB area, the offset and threshold requirements applicable in the HGB area for NNSR will be automatically altered upon finalization of the redesignation substitute.

We previously approved a HGB area redesignation substitute for the revoked 1-hour ozone standard (80 FR 63429). In this action, we are also finalizing a non-substantive technical correction to 40 CFR 81.344 to reflect this approval.

We received comments on the proposal from five commenters. Our response to the comments are below.

II. Response to Comments

Comment: Three commenters recognized the progress of the area and the work of TCEQ in making such significant air quality improvements in the HGB area and urged the EPA to finalize this action to reflect the changes in the area.

Response: We agree with the commenters that HGB area has made progress in meeting air quality standards. No changes were made to the final action based on these comments.

Comment: One of the supportive commenters urged the EPA to approve revisions to the Texas SIP to reflect changes to certain provisions for the NNSR program effective in the HGB area as a result of the EPA's approval of the

redesignation substitute. The commenter also asserted that approval of the redesignation substitute will result in the area no longer being subject to any remaining applicable anti-backsliding requirements.

Response: Due to the drafting of the Texas SIP, no revision is necessary to alter NNSR requirements applicable in the HGB area following finalization of this redesignation substitute. The NNSR provisions in the existing Texas SIP contains a provision that cross-references the designation of the area to 40 CFR part 81. See 30 TAC section 101.1(71). Because of the structure of this provision, the identification of an area's classification, and thus the related major source thresholds and offset ratios, is updated without any additional revision to the SIP. Therefore, the EPA's approval of the redesignation substitute automatically updates the applicable NNSR requirements. Following finalization of this rule, the NNSR requirements applicable in the HGB area will be in accordance with the HGB area's current classification for the 2008 ozone NAAQS for newly permitted sources.[1] We note that approval of this redesignation substitute does not relieve sources in the area of their obligations under previously established permit conditions.[2] 81 FR 33161, 33165. The Texas SIP includes a suite of approved permitting regulations for the Minor and Major NSR, which will continue to apply after approval of the redesignation substitute in the HGB area. Each of these programs has been evaluated and approved by EPA as consistent with the requirements of the CAA and protective of air quality, including the requirements at 40 CFR 51.160 whereby the TCEQ cannot issue a permit or authorize an activity that will result in a violation of applicable portions of the control strategy or that will interfere with attainment or maintenance of a national standard. So moving forward to a time when the HGB area has a marginal designation as the only applicable nonattainment designation, new sources and modifications will continue to be permitted and authorized under the existing SIP requirements if they are determined to be protective of air quality. We would also note that EPA has proposed to reclassify Houston from marginal to moderate for the 2008 ozone NAAQS. 81 FR 66240, September 27, 2016.

The EPA agrees that approval of the redesignation substitute will result in the HGB area no longer being subject to the regulatory anti-backsliding requirements for the 1997 ozone standard established pursuant to the principles of CAA section 172(e). However, if an anti-backsliding provision is in the Texas SIP and needs to be changed to reflect the change in this area's status, such change is subject to the SIP revision process, which in turn is subject to review under CAA sections 110 and 193, if applicable. To date, Texas has not submitted a SIP revision concerning any anti-backsliding provisions for the EPA's consideration.

Comment: One commenter also recognized the progress and supported the action but wanted the EPA to clarify that the redesignation substitute will permanently eliminate the anti-backsliding requirements for the revoked ozone NAAQS.

Response: Following finalization of a redesignation substitute, an area is no longer subject to any remaining applicable anti-backsliding requirements associated with the specific revoked NAAQS, including the major source thresholds and offset ratios associated with the area's classification under those standards. However, as noted previously, any changes to a SIP are subject to consistency checks with CAA sections 110(l) and 193, if applicable. Because the 1997 ozone NAAQS has been revoked, no new requirements associated with that NAAQS would come due at any future date.

Comment: One commenter objected to the use of the redesignation substitute mechanism and the implications of such an action. The commenter incorporates by reference the relevant portions of a brief filed in a petition challenging the EPA's promulgation of the redesignation substitute. *See South Coast Air Quality Mgmt. Dist.* v. *EPA,* No. 15–1115 (D.C. Cir.). They contend that the HGB area continues to have unhealthy levels of ozone pollution, therefore, raising the NNSR thresholds and lowering the offset requirements for the area is inappropriate. The commenter further states that our action will result ''in great expense and inefficiency: because some sources will not prevent pollution, they and other sources may have to retrofit at greater expense.'' The commenter asks the EPA to either disapprove the redesignation substitute or delay action until the underlying litigation is resolved.

Response: The EPA disagrees with the commenter that it is inappropriate to approve redesignation substitutes for the Houston-Galveston-Brazoria area for the 1997 ozone standard. As the commenter noted, the EPA created the redesignation substitute in the 2008 ozone SIP Requirements Rule as one of two acceptable procedures through which a state may demonstrate that it is no longer required to adopt any additional applicable requirements for an area which have not already been approved into the SIP for a revoked ozone NAAQS. 80 FR 12264, 12304 (March 6, 2015).

The EPA acknowledges that this rule has been challenged in the D.C. Circuit by the commenter. However, the rule has not been stayed pending resolution of the litigation, and as such, it is appropriate to continue to implement the 2008 ozone SIP Requirements Rule during the pendency of the litigation.

The EPA believes the redesignation substitute is an appropriate mechanism because it serves as a successor to a redesignation to attainment, for which these areas would have been eligible if the EPA had not revoked the 1-hour and 1997 ozone standards. For a more detailed description of why the EPA has determined the HGB area has met the redesignation criteria for the revoked 1997 ozone standard, see 81 FR 33166 for the proposal and Technical Support Document. Upon approval of a redesignation substitute, a state may request to revise its SIP to shift regulatory anti-backsliding requirements contained in the active portion of the SIP to the contingency measures portion of the SIP, subject to a showing of consistency with the general anti-backsliding checks in CAA sections 110(l) and 193 (if applicable). The EPA approval of the redesignation substitute has the same effect on these areas' nonattainment regulatory anti-backsliding requirements as would a redesignation to attainment for the revoked standard. The EPA believes that, under any view of anti-backsliding for a revoked standard, it should not mean imposing requirements greater than those that would apply if the standard had not been revoked.

An approvable redesignation substitute must include more than a determination of attainment of the prior NAAQS, and show that it addresses redesignation criteria for that NAAQS. Moreover, the state remains subject to ongoing requirements to meet the new more stringent 2008 ozone standard in that area. In this context, the EPA believes finalizing this action is appropriate—it recognizes and supports Texas's progress in having attained the

[1] *See* Section D of the TSD for this action in the docket for this rulemaking for additional information.

[2] *See* Final Implementation Rule for 2008 Ozone Standard, 80 FR 12264, at 12299, footnote 83 and at 12304, footnote 91.

prior standards in the HGB area due to permanent and enforceable emissions reductions, and reinforces continued attainment by demonstrating that the HGB area can maintain the revoked standard. See 80 FR 12264, 12305.

III. Final Action

We find that Texas has successfully demonstrated it has met the requirements for approval of a redesignation substitute for the revoked 1997 8-hour ozone NAAQS for the HGB area. We are approving the redesignation substitute for the HGB area based on our determination that the demonstration provided by the State of Texas shows that the HGB area has attained the revoked 1997 8-hour ozone NAAQS due to permanent and enforceable emission reductions, and that it will maintain that NAAQS for ten years from the date of the EPA's approval of this demonstration. As we no longer redesignate nonattainment areas to attainment for the revoked 1997 8-hour ozone NAAQS, approval of the demonstration serves as a redesignation substitute under the EPA's implementing regulations. As a result of this action, Texas is no longer required to adopt any additional applicable 1997 8-hour ozone NAAQS requirements for the area which have not already been approved into the SIP (40 CFR 51.1105(b)(1)). It also allows the state to request that the EPA approve the shifting of planning and control requirements implemented pursuant to the 1997 ozone NAAQS from the active portion of the SIP to the contingency measures portion of the SIP, upon a showing of consistency with CAA sections 110(l) and 193 (if applicable) (40 CFR 51.1105(b)(2)).

We are also finalizing a non-substantive technical correction to 40 CFR 81.344 (Section 107 Attainment Status Designations for Texas) to reflect our previous approval of a HGB area redesignation substitute demonstration for the revoked 1-hour ozone standard.

IV. Statutory and Executive Order Reviews

Under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves a demonstration provided by the State of Texas and finds that the HGB area is no longer subject to the regulatory anti-backsliding requirements under the principles of CAA section 172(e) for the revoked 1997 8-hour ozone NAAQS; and imposes no additional requirements. Accordingly, I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule does not impose any additional enforceable duties, it 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). This rule also does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a demonstration provided by the State of Texas and find that the HGB area is no longer subject to the regulatory anti-backsliding requirements under the principles of CAA section 172(e) for the revoked 1997 8-hour ozone NAAQS; and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

The rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Additionally, this rule does not involve establishment of technical standards, and thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. The EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment.

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 9, 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

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control.

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

Dated: October 27, 2016.

Samuel Coleman,

Acting Regional Administrator, Region 6.

40 CFR parts 52 and 81 are 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 SS—Texas

■ 2. Section 52.2275 is amended by adding paragraph (n) to read as follows:

§ 52.2275 Control strategy and regulations: Ozone.

* * * * *

(n) *Approval of Redesignation Substitute for the Houston-Galveston-Brazoria 1997 Ozone Nonattainment Area.* EPA has approved the redesignation substitute for the Houston-Galveston-Brazoria 1997 ozone NAAQS nonattainment area submitted by the State of Texas on August 18,

2015. The State is no longer being required to adopt any additional applicable 1997 ozone NAAQS requirements for the area.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 3. The authority citation for part 81 continues to read as follows:

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

■ 4. Section 81.344 is amended:

■ a. In the table for ''Texas—Ozone (1-Hour Standard)'' by revising the entries for ''Houston-Galveston-Brazoria, TX'' and revising footnote 4; and

■ b. In the table for ''Texas—1997 8-Hour Ozone NAAQS (Primary and Secondary)'' by revising the entries for ''Houston-Galveston-Brazoria, TX'' and adding footnote 7.

The revisions and additions read as follows:

§ 81.344 Texas.

* * * * *

TEXAS—OZONE [2]

[11-Hour standard]

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * *	*	*	*	*
Houston-Galveston-Brazoria Area, TX:				
Brazoria County [4]		Nonattainment	11/15/90	Severe-17.
Chambers County [4]		Nonattainment	11/15/90	Severe-17.
Fort Bend County [4]		Nonattainment	11/15/90	Severe-17.
Galveston County [4]		Nonattainment	11/15/90	Severe-17.
Harris County [4]		Nonattainment	11/15/90	Severe-17.
Liberty County [4]		Nonattainment	11/15/90	Severe-17.
Montgomery County [4]		Nonattainment	11/15/90	Severe-17.
Waller County [4]		Nonattainment	11/15/90	Severe-17.
* * *	*	*	*	*

[1] This date is October 18, 2000, unless otherwise noted.

[2] The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in Texas except the San Antonio area where it is revoked effective April 15, 2009.

* * * * * * *

[4] A Redesignation Substitute was approved on October 20, 2015.

* * * * *

TEXAS—1997 8-HOUR OZONE NAAQS

[Primary and secondary]

Designated area	Designation [a]		Classification	
	Date [1]	Type	Date [1]	Type
* * *	*	*	*	*
Houston-Galveston-Brazoria, TX:				
Brazoria County [7]		Nonattainment	([4])	Subpart 2/Severe 15.
Chambers County [7]		Nonattainment	([4])	Subpart 2/Severe 15.
Fort Bend County [7]		Nonattainment	([4])	Subpart 2/Severe 15.
Galveston County [7]		Nonattainment	([4])	Subpart 2/Severe 15.
Harris County [7]		Nonattainment	([4])	Subpart 2/Severe 15.
Liberty County [7]		Nonattainment	([4])	Subpart 2/Severe 15.
Montgomery County [7]		Nonattainment	([4])	Subpart 2/Severe 15.
Waller County [7]		Nonattainment	([4])	Subpart 2/Severe 15.
* * *	*	*	*	*

[a] Includes Indian Country located in each county or area, except as otherwise specified.

[1] This date is June 15, 2004, unless otherwise noted.

* * * * * * *

[4] Effective October 31, 2008.

* * * * * * *

[7] A Redesignation Substitute was approved on November 8, 2016.

* * * * *

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FEDERAL REGISTER

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Part III

The President

Executive Order 13746—Advancing the Goals of the Power Africa Initiative to Expand Access to Electricity in Sub-Saharan Africa Through the Establishment of the President's Power Africa Working Group

Federal Register
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Tuesday, November 8, 2016

Presidential Documents

Title 3—

The President

Executive Order 13746 of November 3, 2016

Advancing the Goals of the Power Africa Initiative to Expand Access to Electricity in Sub-Saharan Africa Through the Establishment of the President's Power Africa Working Group

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy.* It is the policy of the United States to partner, consult, and coordinate with African governments, bilateral and multilateral partners, the private sector, and civil society to expand access to electricity and increase electricity generation in Sub-Saharan Africa, in both urban and rural areas. Through the Power Africa initiative (Power Africa), we aim to double access to power in Sub-Saharan Africa by adding 30,000 megawatts (MW) of capacity and 60 million new household and business connections by 2030, and in so doing, leapfrog to cleaner forms of energy and foster inclusive economic growth and opportunity across Sub-Saharan Africa.

On June 30, 2013, my Administration launched Power Africa, a new initiative to double access to power in Sub-Saharan Africa, where more than two-thirds of the population is without electricity, and more than 85 percent of those living in rural areas lack access to electricity. In its initial phase, Power Africa aimed to add more than 10,000 MW of cleaner, more efficient electricity generation capacity and to increase electricity access by at least 20 million new households and commercial entities with on-grid, mini-grid, and off-grid solutions. Power Africa builds on Africa's enormous power potential, including extensive clean geothermal, hydro, wind and solar energy resources, as well as vast oil and gas reserves. Power Africa works with countries to develop resources responsibly, build out power generation, transmission, and distribution, and expand the reach of mini-grid and off-grid solutions. Power Africa brings to bear a wide range of tools from across the Federal Government and more than 130 public and private sector partners to support investment in Africa's energy sector. Power Africa provides coordinated support to help African partners expand their power networks and access to electricity, including through policy and regulatory best practices, institutional capacity building, pre-feasibility support, grants, long-term financing, insurance, guarantees, credit enhancements, and technical assistance.

On August 5, 2014, during the U.S.-Africa Leaders Summit, my Administration affirmed that Power Africa is intended to reach across Sub-Saharan Africa, and tripled Power Africa's goals. Power Africa is now working toward adding 30,000 MW of new, cleaner electricity generation capacity and increasing electricity access by at least 60 million new connections. On January 28, 2016, my Administration, in coordination with Power Africa partners, launched the Power Africa Roadmap, which lays out a concrete plan for Power Africa to meet its ambitious goals by 2030.

The Electrify Africa Act of 2015, enacted on February 8, 2016 (Public Law 114–121) (the ''Act''), calls for the development of a strategy to add at least 20,000 MW of electrical power and promote first-time access to power and power services for at least 50 million people in Sub-Saharan Africa by 2020 in both urban and rural areas—an effort that directly supports and complements Power Africa's goals. This order furthers the purposes of the Act and the work that Power Africa has been undertaking.

Sec. 2. *Establishment of the Coordinator for Power Africa.* The United States Agency for International Development (USAID) shall serve as the lead agency to facilitate the implementation of Power Africa and associated activities across the United States Government. The Administrator of USAID shall establish the position of Coordinator for Power Africa within USAID.

Sec. 3. *Power Africa Working Group.* (a) There is hereby established the Power Africa Working Group (Working Group), co-chaired by the Coordinator for Power Africa within USAID and a member of the National Security Council (NSC) staff to be designated by the Assistant to the President for National Security Affairs. The Working Group shall serve as the multi-agency coordinating and advisory body for the Federal Government's efforts to identify, evaluate, prioritize, and deliver assistance to energy projects across Sub-Saharan Africa in order to advance the energy access and electricity generation goals of Power Africa and promote policy cohesion across the Federal Government. Through the Working Group, participating departments and agencies shall provide advice and promote coherence of United States Government positions on and assistance for priority energy projects and policy reforms in support of Power Africa.

(b) The Working Group shall consist of representatives of the following executive branch departments and agencies (Participating Agencies):

(i) the Department of State;

(ii) the Department of the Treasury;

(iii) the Department of Agriculture;

(iv) the Department of Commerce;

(v) the Department of Energy;

(vi) the Export-Import Bank of the United States;

(vii) the United States Agency for International Development;

(viii) the Overseas Private Investment Corporation;

(ix) the United States Trade and Development Agency;

(x) the Millennium Challenge Corporation;

(xi) the United States Army Corps of Engineers;

(xii) the Office of Management and Budget; and

(xiii) such other agencies as the Co-Chairs may designate or invite to participate, including the United States African Development Foundation.

(c) The Working Group may consult with non-United States Government entities that participate in Power Africa as bilateral, multilateral, private sector partners and nongovernmental organizations to provide input and advice to the United States Government, as appropriate, regarding the implementation of Power Africa.

(d) The Working Group may establish sub-groups consisting exclusively of Working Group members or their designees, as appropriate, such as one for each of the three pillars of the Power Africa Roadmap: (1) megawatts, (2) connections, and (3) unlocking energy sector potential.

(e) The Working Group shall be supported by the Office of the Coordinator for Power Africa within USAID.

Sec. 4. *Mission and Functions of the Working Group.* The Working Group, as may be necessary and appropriate to carry out this order, shall:

(a) Ensure efficient and effective coordination of energy access activities in Sub-Saharan Africa among Participating Agencies.

(b) Identify, prioritize, and evaluate potential Power Africa projects, regulatory and policy reforms, and programmatic focus areas, including maximizing deployment of and access to renewable energy.

(c) Identify country and project specific obstacles to the development of the electricity sector, including financial and technical assistance needs

and capacity building needs, and identify opportunities for Participating Agencies to deploy their respective tools and best practices to advance needed reforms and accelerate the completion of Power Africa projects.

(d) Enhance coordination among Participating Agencies to maximize the efficiency and effectiveness of United States Government development assistance and other development finance tools as related to Power Africa priorities.

(e) Facilitate information sharing and coordination of partnerships between Participating Agencies and African governments, the private sector, development partners, and bilateral and multilateral partners to help advance Power Africa's goals.

(f) Identify appropriate courses of action to liaise with host governments to advance regulatory and policy reforms, as well as energy transactions, related to Power Africa.

(g) Identify best practices for Participating Agencies to coordinate their engagement with development partners, including bilateral donors, development finance institutions, and multilateral development banks on energy access issues, to ensure that Power Africa's tools are deployed in a way that is complementary to and leverages the impact of United States Government resources.

(h) Meet with private sector partners, as appropriate, to review Power Africa projects and activities, and to solicit input regarding technical, policy, financial or political, obstacles that partners are encountering in the energy sector across Sub-Saharan Africa.

(i) Meet with bilateral and multilateral development partners, as appropriate, to coordinate country-specific and regional energy access policy agendas, coordinate deployment of financial resources and technical expertise to identify and accelerate Power Africa projects and activities, and review project pipelines.

(j) Monitor and periodically evaluate Power Africa projects and activities to measure the effectiveness of United States Government assistance and other development finance tools in achieving Power Africa's electricity generation and access goals, and to share lessons learned. These evaluations may recommend reforms to facilitate support for future projects and activities, and to increase the Working Group's effectiveness.

Sec. 5. *Partnering with African Private Sector Companies.* I hereby direct Participating Agencies to facilitate as appropriate, to the maximum extent possible under the law, the participation of local and regional companies in power, renewable energy, and climate change projects in low-income countries in Africa, including through the use of financing and risk insurance, where appropriate.

Sec. 6. *Reporting.* The Administrator of USAID, in coordination with the Participating Agencies, shall lead in the development of a report, to be transmitted to the Congress pursuant to section 7 of the Act and the Presidential Memorandum of August 3, 2016, ''Delegation of Authority Pursuant to Section 4 and Section 7 of the Electrify Africa Act of 2015,'' on progress made toward achieving the comprehensive, integrated, multiyear strategy that was transmitted to the Congress on August 6, 2016, pursuant to section 4 of the Act, to encourage the efforts of countries in Sub-Saharan Africa to implement national power strategies and develop an appropriate mix of power solutions to provide access to sufficient, reliable, affordable, and sustainable power in order to reduce poverty and drive economic growth and job creation.

Sec. 7. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof, or the status of that department or agency within the Federal Government; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
November 3, 2016.

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